Public Utilities
FORTNIGHTLY

VOL. IX; No. 4 FEBRUARY 18, 1932

A NEW AND SIGNIFICANT TEST OF

The Right to Be Regulated

PART I

Can a private business be converted into a "public utility"— and regulated accordingly—by a mere legislative *fiat?* The state of Texas, under the guise of attaching conditions to its permit to use the highways, is now attempting to regulate the rates of private truckmen, and seeking to force the surrender of their constitutional rights. The issue now before the courts involves a regulatory principle of vital importance to privately owned and governmental public utility enterprises alike.

BY HENRY C. SPURR

A DECISION of the very greatest importance—if it is sustained—has recently been rendered by the United States District Court for the Southern District of Texas.[1] It deals with that troublesome question of the right of the state to regulate the business of private truckmen. But it has a bearing on questions of much wider interest.

To understand its significance those who are not lawyers will have to have a little background.

IF the reader's memory goes back as far as the 90's, he will recall that draymen, or cartmen as they were sometimes called, used to line up at various stands in the downtown section of cities. They were on the lookout for jobs. They aimed to serve the public; in other words, they were ready to carry goods for anyone who came along.

In a humble way they were what, in legal parlance, is known as "common carriers for hire." In that respect they were like the railroads which carry for the public in general.

[1] Stevenson *v.* Binford (U. S. Dist. Ct. S. D. Texas) (1931) P.U.R.1932A, 1.

Other draymen did not stand around like that. They hired out to carry truck for individuals or business firms exclusively. Cartmen of this kind, in the language of the law, were also carriers for hire but they were what is known as private or "contract carriers for hire" and not "common carriers for hire."

The distinction is that common carriers for hire carry for the public generally and private or contract carriers for hire carry for a limited part of the public.

This distinction between the two classes of draymen or cartmen was of no importance in those days, as these carriers, because of their limited range of operation, did not compete with the railroads and because what rivalry existed was of no importance to the public. The gasoline motor, however, has multiplied the number of truckmen and has added to their range and capacity. Trucks carrying freight now crowd the highways. The legal distinction in the character of the business has become important.

Private truckmen or contract carriers for hire flourish in great numbers and in increasing proportion to those which carry for the public generally.

THESE private truckmen or contract carriers for hire compete both with the truckmen who carry for the public generally and with the railroads. It is a very serious form of competition from the standpoint of the railroads, and of the trucking companies engaged in a general trucking business. Admitting that to be so, these questions naturally arise:

Why should these private truckmen not be put under commission control?

Why should they not be kept from competing with other truckmen and with the railroads if that competition is harmful to the public?

Why should their rates not be regulated?

Well, the troublesome obstacle in the way of that has been constitutional law. Under our American political theory neither the Federal nor the state governments can do anything they please with reference to the business of their citizens. Our forefathers appreciated the benefits which flow from strong governments, but at the same time feared their tendency to become tyrannical. So they were careful to limit the powers of their governments in many respects. They put those safeguards in Constitutions. As a consequence, one of the things that neither the Federal nor the state governments can do is to prevent a man from engaging in purely private business merely because it will affect the business interests of somebody else.

Another thing our American governments cannot do is to regulate the rates or charges of a purely private business. Generally speaking, the right to engage in a calling and to charge what one pleases for his services is a valuable liberty which our American governments cannot interfere with.

Governments, however, have the power to prevent their citizens from engaging in a public utility or common carrier business without governmental consent. They also have the power to regulate the rates of public

utilities, including common carriers. That is because this particular kind of business is deemed to be affected with a public interest, dedicated to the public so to speak. It is an exception to the general rule of freedom in the choice and pursuit of a calling.

A STATE may, of course, protect its highways and regulate the traffic on them, although this may affect the business of those who are using the highways. That is a highway and traffic proposition. But the statutes dealing with the regulation of private truckmen go further than that. The chief aim of that kind of regulation has been to protect the public from wasteful competition and, incidentally, to fix the rates of private truckmen. That amounts to a regulation of business and not a regulation of highways.

Now, if governments cannot stop their citizens from engaging in private business for the purpose of preventing competition and if governments cannot regulate the rates of private business, how can these private truckmen or contract carriers for hire be kept off of the highways on the ground that their competition with other truckmen and with the railways will be harmful?

And how can the rates of these private truckmen be regulated?

That is the great problem which has puzzled the legislatures.

A VERY simple device that was first tried was to have the legislatures declare the business of a private truckman to be a common carrier business and then proceed to subject it to the burden of common carrier regulation. If this legislation had been upheld, our Federal and state governments would have had enormous powers over all kinds of business. They could, on this theory, regulate any business under the sun, prevent its establishment, or fix its rates. If a government wanted to regulate the charges of shoe cobblers all the legislature would have to do would be to declare shoe cobbling to be a public utility. Having power to regulate the rates of public utilities, the government could then regulate the charges of the cobbler. Newspaper business and magazine business —any kind of business in fact—could be subjected to rate regulation by this easy method.

The Supreme Court, however, would not allow that to be done. Such statutes were declared unconstitutional. The court held in effect that an old one-hoss shay cannot be converted into an automobile by calling the ancient vehicle a smoke wagon. The courts declared that a state cannot, by its fiat or definition, change a private business into a public utility business and then regulate it as if it were in fact a public utility. The court said that whether or not a

¶ "THE *specific question raised by the Texas case is whether the state can prohibit the exercise of a private calling in order to prevent competition and regulate the rates of a private business indirectly, although it has no constitutional power to do so directly.*"

business is public is a question of fact and not a matter of legislative definition.

ANOTHER point. The Supreme Court also held—and in a private carrier case—that a private carrier cannot, as a condition of the grant of the right to use the highways, be compelled to become a common carrier and in so doing waive the constitutional right to conduct a private business.[8] This is a principle of most vital concern to everybody engaged in any sort of business. Other attempts to regulate private business through a somewhat less definite legislative effort to convert it into a public utility business but practically amounting to the same thing, need not be noticed.

Let us now consider the Texas case.

A TEXAS law which subjects the owner of a private trucking business to all the burdens of a common carrier, except the duty to serve the public generally, was upheld by the court. This Texas statute is a very interesting law and the decision of the court upholding it an extremely important one if it is sound. It should, therefore, be carefully considered.

The Texas legislature for the purpose, among other things, of maintaining a dependable transportation system—meaning in plain words, the protection of existing carriers from competition deemed harmful to the public—enacted a law for the regulation of:

(1) Common carriers for hire, and

(2) Contract carriers for hire or private truckmen.

Here, of course, was an obvious effort to avoid the objection to other statutes which sought to convert private carriers into common carriers by definition. The legislature, however, in trying to steer clear of this snag attempted something else in the way of definitions which would seem to be equally futile.

FIRST: It declared the business of a motor carrier for hire along the highways of the state to be a business "affected with a public interest." This includes both public and private trucking business.

SECOND: It asserted that the right to operate a trucking business on a public highway is a public franchise which no one can enjoy without the permission of the state.

THIRD: It defined the franchise to use the highways by a common carrier for hire as a "certificate of public convenience and necessity."

FOURTH: It defined the franchise to use the highways by private carriers for hire as a "permit."

But the character of none of these things can be changed by legislative definition.

THE public has a certain interest in every kind of business but when it is said that a business is "affected with a public interest," what is meant technically is that it is a public utility business subject to regulation as such. To say then that a business is affected with a public interest is merely to say, in other words, that it is a public utility business; and to

[8] Frost *v.* California R. Commission, 271 U. S. 583, 70 L. ed. 1101, P.U.R.1926D, 483.

A Business Cannot Be Converted into a "Public Utility" by Legislative *Fiat*

"No matter how desirable the regulation of the business and rates of private trucking may appear to be, it is too late, in view of the rulings of the Supreme Court, to suppose that it can be done by a mere legislative declaration that this particular kind of business is affected with a public interest; and that the privilege of engaging in it in competition with others is a permit, rather than a "certificate of convenience and necessity."

say that a business is a public utility business is to say, in other words, that it is a business affected with a public interest.

A private trucking business is not, in fact, affected with a public interest in the technical sense, because no business is affected with a public interest unless the owner of that business has granted an interest in it to the public. To do this he must hold himself out to serve the public; and as private carriers do not do this, their business cannot, as a matter of fact, be affected with a public interest. This declaration of the legislature, therefore, amounts to no more than another attempt to define a private carrier as a common carrier. The attempt is indirect but the effect is the same.

Whether the right to operate a private carrier business on the public highways is a public franchise or not, is a question of law or fact which cannot be affected one way or another by legislative declaration in respect to it.

The attempt to define the privilege granted to a common carrier to use the highways as a "certificate of public convenience and necessity" and the right to do the same thing by a private carrier as a "permit" contributes nothing to the constitutionality of the law. The right granted under the Texas statute is precisely the same in either case, and both are used to protect the existing transportation system from harmful competition.

So much for the legislative definitions in this law.

THE administration of the regulatory features of the Texas act is placed in the hands of the state railroad commission. Among other things, the statute provides that if:

> ". . . the commission shall be of the opinion that the proposed operation of any such carrier will impair the efficient public service of any authorized common carrier, then adequately serving the territory,"

the commission may refuse the permit. The statute also authorizes the commission to fix minimum rates of contract carriers in no event less than

those charged by common carriers. It forbids rebates and discrimination and the making of contract charges less than those fixed by the commission. It requires contract as well as common carriers to keep books of account and make reports to the commission. It thus subjects them to practically all of the regulatory burdens imposed on common carriers.

THERE is in this law a confusion of two ideas. One is that the character of a thing can be changed by definition, the weakness which inhered in other statutes attempting to regulate private business which were declared unconstitutional. The other is, that as special privileges like franchises are within the power of a state to grant or withhold, the state may attach to the grant of the privilege such conditions as it pleases.

No matter how desirable the regulation of the business and rates of private trucking may appear to be, it is too late, in view of the rulings of the Supreme Court, to suppose that it can be done by a mere legislative declaration that this particular kind of business is affected with a public interest; and that the privilege of engaging in it in competition with others is a "permit," rather than a "certificate of convenience and necessity." The state did not, indeed, present its case on that theory. The position taken was that the business of a private carrier is one which may be enjoyed only under legislative grant; and that being so, the state argued that the legislature may impose such conditions to the grant as are deemed to be for the public good, including reasonable regulation of rates and practices. The court upholds the law on that ground and says:

> "Here is no case of the compelling private carriers to become common carriers; no case of granting a right and thereafter arbitrarily or illegally conditioning that right. Here is a case of a clear, a simple, a complete declaration of policy that the public has an interest in the business of carriage for hire over the highways of the state, a prohibition of the right to engage in such business except under a franchise, and an affixing to the enjoyment of a franchise the condition that the holder must become an integral part of the transportation system of the state, and must submit to the regulation applicable to his franchise as to rates and practices."

In a nutshell the ruling of the court amounts to this:

The state can, if it chooses, grant or withhold a permit to use the highways for private business; therefore, it can grant the permit on condition that a private truckman consent to all of the burdens of a common carrier except the duty to serve the public in general.

Put it in another way. The holding of the court is that the state may impose, as a condition of granting its permit, the surrender by private carriers of freedom to compete with others and the freedom from rate regulation. In plain English the court declared that as a condition to the granting of the permit the state may require the surrender of rights guaranteed by constitutional law.

If that is sound logic, then our Constitutions are very weak protectors. The famous declaration "what is the Constitution among friends" would not be without point. If what cannot be done directly in violation of the Constitution, may be indirectly done in this way, Constitutions would not mean much to anyone who had any privilege to ask of a state or of the Federal government.

If the right to do business on the highways, for instance, is a special privilege—and for the purpose of this argument it is conceded to be—then the right of a drygoods store owner to deliver goods by his own trucks over the highways is a special privilege which may be granted or denied. The use of the highways in this case would be the same as the use by private truckmen for hire. The use of the highways by trucks is primarily for the convenience or benefit of customers to whom goods are delivered. Whether they are delivered in trucks owned by the proprietor of the store or by some one hired by him makes no difference to the customer. Whatever profit there is through the use of the highways for such a transaction is paid by the customer. It matters not to him whether it is paid to the private truckmen or to the store owner. The use of the highway, then, being the same in principle in either case, if the state can regulate the rates of a private truckman as a condition to the grant of a permit, why can it not also regulate the rates of the owner of a store delivering goods to his customers in his own truck? Why can it not regulate not only the cost of delivery but the charges for the goods themselves? Conceivably the business concerns which are now using private truckmen for the delivery of their goods could take over that business themselves and make deliveries in their own trucks. The effect of this competition on the railroads and others would then be just as serious as that of competition by private truckmen.

Again, if the surrender of one constitutional right may be required as a condition to the grant by a state of the privilege of doing business, why not the surrender of *any* constitutional right?

Even the right to do business as a corporation is a special privilege. The right of a foreign corporation not engaged in interstate commerce to do business in a state is a special privilege within the power of the state to grant or withhold. Can the state impose as a condition of the grant the surrender by the stockholders of their right to vote in general elections for officers of the state or Federal government? Can they be made to surrender their right to resort to the courts for the settlement of disputes? Most persons would be very much surprised if such were the law. There would consequently seem to be something wrong with the idea that a state or even the United States may grant a privilege on *any condition whatsoever.*

If these illustrations are not sufficient to remove doubt as to whether or not the power of governments to

¶ "The *courts declared that a state cannot, by its fiat or definition, change a private business into a public utility business and then regulate it as if it were in fact a public utility. The court said that whether or not a business is public is a question of fact and not a matter of legislative definition.*"

impose conditions to the grant of privileges is limited, let us take a more obvious illustration.

COULD a state, as a condition of granting the privilege of doing business as a corporation, require the corporation to engage in counterfeiting or to finance an insurrection against the Federal government, for example?

Even a layman would emphatically say "No" to that. Such a proposal would be absurd on its face.

General statements, therefore, which have sometimes appeared in court decisions that states may impose *any conditions they please* to the grant of a privilege, must be taken with several grains of salt. They must be considered merely in connection with the facts of the case the court was deciding.

It is reasonable, therefore, to assume that there must be *some* restraint on the power of the Federal and state governments to impose conditions as a consideration for the grant of privileges. The specific question raised by the Texas case is whether the state can prohibit the exercise of a private calling in order to prevent competition and regulate the rates of a private business indirectly, although it has no constitutional power to do so directly.

The broad general question involved is whether the state or Federal government may require the surrender of constitutional rights as a condition to the grant of a governmental privilege.

A state, for example, acting through its public service commission can grant or refuse certificates of public convenience and necessity to public utilities. Can the commission say to the owners of the business:

"Gentlemen, you know we have the power to grant or refuse this certificate. We don't think much of the rule that utilities are entitled to earn a return on the present value of their property. We think that prudent investment is the proper rate base. If you will agree to that and say that you will never take an appeal to any Federal court, we will grant the certificate."

Assume that the utility company accepts the certificate under those conditions, begins operation, and afterwards—reprehensively or not—changes its mind. It decides to stand for a constitutional right. It seeks to remove a case to the Federal court in order to get the right to a return on the present value of its property. Could the utility company be enjoined from doing that?

Assuming that it could not, on the ground that the condition imposed was illegal, could the state, through its commission, nevertheless revoke the certificate granted to a utility company on the theory that it was a privilege which the state had the right to grant or withhold?

IN *the next and concluding instalment, the author will cite court decisions that have been rendered in analogous controversies, and point out the highly important bearing that this Texas case has upon the constitutional rights of the owners of both private and public utility enterprises.*

HOW MUCH TODAY'S RATEPAYER SHOULD HELP

The Ratepayer of Tomorrow

Some of the rights and wrongs of the amortization processes employed by the utility companies

By LUTHER R. NASH

THE processes of amortization are familiar to all public utility accountants and executives. Many such processes are of such a routine nature as to raise no questions regarding their propriety.

Among the items included in this group are the discounts on and selling costs associated with the issue of fixed-term indebtedness, the cost or value of patents during their life, the cost or value of term franchises, and the cost of rate cases involving extensive investigations, appraisals, legal expenses, and other items, distributed over a period of years within which the resultant rates will normally remain in effect.

All such amortization proceedings involve two distinguishing factors: a definite expenditure, and a specific period during which such expenditure has applicability but beyond which it has no further value or significance.

NOT all amortizations which utilities have undertaken or which have been proposed embody both these essentials. The sum of money in question may be definite, but the period of amortization may not be clearly fixed.

It is the purpose of this article to consider certain cases in which amortization procedure may be of questionable propriety or where it is clearly inequitable. The question of equity will be viewed from the standpoint of utility customers rather than that of investors.

AMONG the costs the amortization of which is questionable may be included such items as overhead charges applicable to utility construction. The conventional group of overhead charges which are recognized in both construction accounting and in valuation includes a number

of items that clearly do not survive the particular construction to which they apply. Among them are supervision of construction, injuries and damages, insurance, and taxes. Such items should clearly be amortized during the life of the associated property.

It is less obvious that certain other overheads lose their value when the items to which they were originally attached disappear. The design of public utility property requires extended engineering research and costs. If specific items of property are replaced at the end of their usefulness by identical or similar items requiring no new engineering services, the original engineering cost may appropriately be continued in fixed capital rather than written off as required by some accounting practices.

If property constructed as a whole and requiring substantial charges for interest during construction is thereafter replaced piecemeal without additional interest charges, the continuance of the original charges may be justified. The same is true of certain administrative and legal expenses associated with the original construction of the property, which have no counterpart when subsequent replacements are necessary.

If overhead costs are of such a permanent nature that they outlive the physical items to which they were originally attached, and they are not replaced by other similar costs, their amortization during the life of the original physical property subjects the users of this property to charges not all of which apply exclusively to their service. Subsequent users of the substitute property are thereby relieved of a portion of the original charges which they might equitably bear.

In a somewhat similar category are the costs of marketing stock issues. On the assumption that such issues may remain outstanding throughout the life of the issuing corporation, which is commonly without statutory limitation, accounting systems usually provide for capitalization of such costs. It is sometimes urged, however, that because outstanding issues may be called or the corporation cease to be active after a limited period of years, the costs of such financing should be included in the charges for service during a limited period of years. Again, this would involve a concentration of charges within a period to which only a part of them apply.

Somewhat similar problems arise in connection with the retirement of property for other than physical causes. Such retirement frequently results from engineering progress or public demands long before the property shows evidence of decrepitude.

Typical illustrations of such procedure are the substitution of steel cars for wooden ones, and underground electrical distribution for overhead lines. Although such substitution may be foreseen in many cases, it is not clear that the users of the older facilities should be burdened by excessive amortization charges in order that future patrons may have more convenient, safer, or more efficient service. Electric railways are acutely concerned with such problems at the present time, particularly

when electric cars and trackage are abandoned and the more flexible bus service substituted. In some cases the greater economies and convenience of bus or other substitute service permit continued amortization of earlier investment made for other service, and the cost of amortization may be more widely distributed without undue burdens.

In all such cases an analysis should be made of the equities involved, including the cost of service over a period of years, to insure that the customers within a certain limited period are not unduly burdened with costs, some portion of which is clearly applicable to the customers of other periods. To some extent there will be identity of customers, but over a long period of years such identity gradually disappears.

It is now in order to consider certain other amortization processes which are more clearly inequitable in their character. The rapid growth in public utility service, particularly that of electric power companies, has required frequent investigations such as that of power supply and resources and the advisability of meeting the demands for service in outlying territory. The question may arise as to whether hydroelectric supply from available sources may be more economical than continued steam supply, or as to the most advantageous location of new steam plants in relation to fuel supply, adequacy of condensing water, and load requirements. It may be that maximum power economy can be secured through extensive investments in transmission connections with other utilities. To the extent that such investigations result in specific developments and added economies, their value is as enduring as the projects resulting therefrom, and the amortization of their costs, necessarily large if the projects are comprehensive, should not be charged to customers during a more limited period of years.

There is a tendency on the part of certain accounting authorities to provide for the uniform writing off of investment in depreciable facilities during a period of years assumed to conform to useful life. Such procedure is in effect an amortization of fixed capital as distinguished from the alternative retirement accounting practice which undertakes to provide for all anticipated retirements but not for loss in value or usefulness due to increasing age. Straight-line charges are about 50 per cent larger than those needed to maintain an adequate retirement reserve, and the excess amortization adds nothing to the reliability or efficiency of service in which the average customer is largely interested.

If, as urged, straight-line amorti-

¶ "Clearly, *the present patrons of a public utility should understand if and to what extent they are contributing toward an ultimate municipal purchase of the property, or otherwise facilitating a reduction in rates to be enjoyed by a coming generation.*"

zation of fixed capital is accompanied by a corresponding reduction in rate base and charges for service, serious consequences may result.

For example:

A power company having opportunity to serve a new and relatively very large industrial customer requiring radical additions to existing facilities might find existing rates, based on a value substantially reduced by amortization, entirely too low to cover the cost of the prospective service, and be obliged to increase its rates, accept the business at a loss, or forego the opportunity of adding to its usefulness and efficiency. Under such circumstances present customers would have assumed an added burden with a hope of an offsetting future advantage which may not only not be forthcoming but may be replaced by increased burdens.

FURTHER illustrations of improper amortization are found in certain franchises. The franchises granted in 1907 to the surface railways in Chicago provided that a certain percentage of net income should be paid to the city. The new franchise granted in 1930, covering surface and rapid transit operations, provides for the construction of subways the cost of which will be borne in part by the payments made to the city under the earlier franchises. These payments amounted to about $61,000,000, and the patrons of street cars in past years have contributed that huge sum to the cost of rapid-transit service of the future. Certain other railway franchises have also provided for the amortization through fares of a substantial part of outstanding capital, with or without creating a corresponding equity for the city in the property to facilitate its ultimate purchase.

Clearly, the present patrons of a public utility should understand if and to what extent they are contributing toward an ultimate municipal purchase of the property, or otherwise facilitating a reduction in rates to be enjoyed by a coming generation. The present generation of American citizens has shown an unquestionable liberality in its expenditures, but it is not clear that it is willing to burden itself for the benefit of its successors. A facetious but, nevertheless, practical representative of this generation has critically inquired:

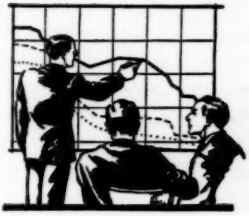
"What has posterity ever done for me?"

ANOTHER item which public utilities are sometimes urged to amortize is going value. Professor Ben W. Lewis has recently discussed [1] at some length the disposition of going value. He contends that it should have no recognition in a rate base but should be provided for so far as necessary in other factors entering into the determination of distributable income. Professor Lewis does not deny the existence of early losses, which are sometimes used as a measure of going value, nor does he definitely approve of their amortization. He classes them among the "uncertainties of investment" to be provided for by "possibility of gain." The process proposed, by whatever name it may be called, is clearly akin to amortization.

[1] See PUBLIC UTILITIES FORTNIGHTLY, November 12, 1931.

The Two Ways of Protecting the Utility Investors Against Early Losses:

"THERE are two recognized ways of providing the protection against early losses which investors in public utilities require to induce them to enter this industry rather than some other field. One involves the amortization of these early losses during a limited period of years. . . . The other recognizes these losses as a permanent item of cost to be included in the rate base and subject to the same continuing return as investment in physical property."



It is not clear that the average investor would be interested in public utilities if a substantial part of his investment were subject to the "uncertainties" and "possibility" involved in Professor Lewis' method. Investors in public utilities *expect* rather than hope that their necessary early losses will be compensated in some way. Such is the experience of investors in other enterprises managed with ability comparable with that found in public utilities. It is true that radical differences exist between public utilities and other enterprises in that the products of the latter are subject to competition, and early losses must be recovered when market conditions permit. Public utilities not subject to similar competition, although by no means entirely free from it, may establish a more definite program with respect to disposition of the cost of building up their business. Incidentally, such cost is not confined to a few early years but may be a continuing item if the utilities are obliged from time to time to extend their facilities into new and, for the time being, unprofitable territory.

THERE are two recognized ways of providing the protection against early losses which investors in public utilities require to induce them to enter this industry rather than some other field. One involves the amortization of these early losses during a limited period of years—in effect, the method which Professor Lewis advocates; the other recognizes these losses as a permanent item of cost to be included in the rate base and subject to the same continuing return as investment in physical property.

CLEARLY the amortization procedure costs more while it is in effect than capitalization. If it is assumed that amortization will be effected in a 10-year period, the annual cost, including carrying charges on unamortized balances, will be approximately double that of carrying the losses indefinitely as an element of value. If the amortization process

is delayed for a period of years until the business has become profitable, the ultimate cost will be further increased by the carrying charges on the losses during the moratorium. The relative merits of these two methods have frequently been discussed by courts and regulatory commissions which have consistently held in the well-reasoned cases that equity requires the recognition of going value as an element in the rate base. The writer has been particularly impressed with the language of a decision rendered by the Oklahoma Supreme Court twenty years ago:

> "During the time of development, there is a loss of money actually expended and of dividends upon the property invested. How shall this be taken care of? Must it be borne by the owner of the plant? Or by the initial customers? Or shall it be treated as part of the investment or value of the plant, constituting the basis upon which charges shall be made to all customers who receive the benefits from the increased service-rendering power of the plant by reason of these expenditures? It seems that the last solution is the logical, just, and correct one. If rates were to be charged from the beginning, so as to cover these expenditures, and earn a dividend from the time a plant is first operated, the rate to the first customers would be in many instances, if not in all, so exorbitant as to be prohibitive, and would be so at the time when the plant could be of least service to them. On the other hand, the public cannot expect as a business proposition, or demand as a legal right, that this loss shall be borne by him who furnishes the service; for investors in public service property make such investments for the return they will yield; and, if the law required that a portion of the investments shall never yield any return, but shall be a total loss to the investor, capital would unwillingly be placed into such class of investments; but the law, in our opinion, does not so require. Private property can no more be taken in this method for public use without compensation, than by any other method. When the use of the property and the expenditures made during the nonexpense-paying and nondividend-paying period of the plant are treated as an element of the value of the property upon which fair returns shall be allowed, then the burden is distributed among those who receive the benefits of the expenditures and the use of the property in its enhanced value."[2]

The forceful reasoning of this decision has had its reflection in the decisions of succeeding years where equity has been the controlling consideration.

Two objections have been raised to the inclusion of early losses as a part of the utility rate base. One holds that the cost of building up a profitable business is conventionally charged, in large part at least, to operating expenses and should, therefore, not be capitalized because it has already been paid for by customers. Professor Lewis contends that the cost of securing new business is similar in all respects to expenditures for fuel and labor which enter into utility operation.

The writer cannot agree that such similarity exists.

Fuel is consumed at the moment service is rendered, and its usefulness immediately ceases as soon as it is burned. The situation with respect to labor for routine operating purposes is similar.

On the other hand, the expense incident to attaching a new customer yields an asset continuing as long as the customer uses the service. The value of connected customers is too well established in any line of business to require extended argument. Furthermore, the fact that certain costs have been charged to operating expenses does not necessarily mean that they have been paid by customers. This is particularly true of the formative years when dividends are

[2] Pioneer Teleph. & Teleg. Co. *v.* Westenhaver (1911) 29 Okla. 429, 118 Pac. 354, 360.

scant or lacking and stockholders suffer losses far in excess of the charges in question.

ANOTHER reason advanced for excluding early losses from consideration in subsequent years is that the owners of the property during the years of losses may have disposed of their holdings and succeeding owners cannot equitably recover losses which they have not themselves incurred.

Such contention is clearly inconsistent with conventional business transactions. The purchaser of an enterprise may contract for all its assets as well as its liabilities, including the right to recover for services rendered which have not been fully paid for. The tribunals have repeatedly held that the purchase price of utility property under foreclosure or other forced sale is not evidence of value, and there is no logical reason why a willing purchaser should not pay a willing seller for an element of value representing cost which the seller has not seen fit to collect and which the courts have generally recognized as proper.

So far this discussion of going value has dealt primarily with the early losses incident to building up a profitable business. Where accounting records are available, such cost can be computed with reasonable accuracy and the uncertainty and indefiniteness sometimes attributed to going value claims do not exist. In the absence of complete accounting records, experiences of other properties developed under similar conditions may be used as a basis of approximate estimates.

The problem of going value as part of a valuation on a reproduction-cost basis is materially different in that value rather than cost may be its basis. Estimates of going value associated with a cost-of-reproduction appraisal are often criticized because they assume conditions which do not in fact exist. It is contended that a utility in any large city offering service for the first time would not need to spend time and money in soliciting and advertising for business, but would be overwhelmed at its offices by a throng of applicants for its service who were wholly familiar with such service but had previously not enjoyed its advantages. Such critics are presumably those who, with respect to other items in public utility valuation, such as paving, insist that historical conditions of construction shall be recognized. They should logically adopt the same procedure in estimating the cost of reproducing an existing business.

❦

¶ "THE *subject of going value is not of sufficient importance to the average utility customer to justify the extended controversy which it has occasioned. If the conventional allowance of 10 per cent for going value were entirely excluded from a valuation, the effect upon the rates of the average domestic consumer, who occasions most of the solicitation relating to rates, would be a minor fraction of one cent a day.*"

ASIDE from the inequities of amortization as applied to going value, however it may be determined, the procedure lacks any definite period over which it could logically be spread and, therefore, lacks one of the essentials of routine accounting. In any event, cost or value must be determined as closely as possible regardless of the difficulties of so doing. Where dependable accounting records are lacking, judgment must be exercised whether the resulting amount is amortized or added to the rate base.

THE subject of going value is not of sufficient importance to the average utility customer to justify the extended controversy which it has occasioned. If the conventional allowance of 10 per cent for going value were entirely excluded from a valuation, the effect upon the rates of the average domestic consumer, who occasions most of the solicitation relating to rates, would be a minor fraction of one cent a day. The aggregate, however, of these insignificant amounts, representing a return on a reasonable allowance for going value, may be the deciding factor in establishing such a credit standing of a public utility that it can extend its facilities and render adequate service instead of a restricted and unreliable service which would be inevitable with restricted credit. The difference between the two standards of service fully justifies the negligible difference in cost to individual customers.

The writer did not intend that this discussion should relate primarily to going value, but it appears that this controversial element serves as the best illustration of the injustice to customers which may result from excessive application of amortization, so essential in certain phases of accounting. The defense of individual rights is a popular pastime which is commendable to the extent that it is based upon sound economic principles. The writer believes that, in recommending the retention of going value and certain other elements discussed herein as a permanent part of the rate base, he is serving the interests of the present generation of utility customers rather than those of a coming generation.

WE have no definite means of forecasting the degree of prosperity which future generations may enjoy. We do, however, know that the present generation has had a higher standard of living than any predecessors, and that, in general, there has been a continuous gain in both prosperity and culture throughout the centuries of recorded history. We know that recent economic developments have contributed more to human welfare than those of earlier years, and that we have not yet fully attained the advantages of newly developed instruments of economy nor secured an adequate measure of available relief from drudgery.

It is, therefore, reasonable to assume that future generations will be at least as competent and prosperous as we are, and will not need our financial assistance to keep the wolf from the door. Under such an assumption it is neither unreasonable nor selfish to refuse to assume, through amortization or otherwise, a part of the costs of future service.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

H. W. ADAM, JR.
Mayor of St. Petersburg, Florida.

"The less the city operates (utility enterprises), the better off we are."

EDWARD M. BARROWS
Magazine writer.

"Within the industry itself, hydroelectric power is by no means as important as it is to the politicians."

HOWARD BRUBAKER
Humorist.

"Talking about popular songs, it was the banks of the Wabash which threw it into the hands of the receivers."

SAMUEL S. WYER
Consulting engineer.

"The Los Angeles municipal electric plant report shows to date a surplus of $28,000,000. The report does not show that for the same period it had a dole in tax exemption of $36,000,000."

FRANK P. MORGAN
Associate Commissioner, Alabama Public Service Commission.

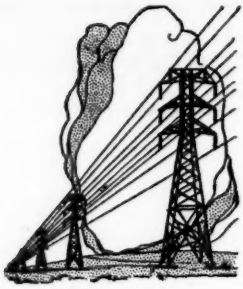
"If the millions of utility consumers in this country could talk to the thousands of shippers and receivers of freight, who have had experience with Federal regulation, this attempt to make Federal regulation of the public utilities an issue in the presidential campaign of 1932 would die over night."

HENRY C. ATTWILL
Chairman, Department of Public Utilities of Massachusetts.

"Unless these decisions of the Supreme Court, which by its construction of the Fourteenth Amendment make the regulation of rates a judicial question rather than a legislative one, are modified, or the electric companies refrain from insisting upon what the court has defined as their constitutional rights under the amendment, the privately owned electric companies will cease to function in most of the states of the country and public ownership will take their place."

ALBERT C. RITCHIE
Governor of Maryland.

"In most cases the best thing the state can do is keep its directing or its eleemosynary hands off and confine itself to seeing that those natural forces which have built society and industry are left as free and untrammeled as possible to work out their own salvation. This may, indeed, sometimes involve regulation, and it may possibly involve direct help in dire emergencies, but it does not involve playing the part of *pater familias* or Santa Claus."



Progressive Ventures in Commission Regulation

How the "Municipal Power Districts" Came

PART II

In the first article of this series, Dr. Glaeser told of some of the new measures recently instituted in Wisconsin for the regulation of public utilities, and of the reorganization of the former Railroad Commission into the present Public Service Commission. In the following instalment the author describes the proposed "power districts"—a subject that is of as much interest to public ownership advocates as to the utility industry.

By MARTIN G. GLAESER
PROFESSOR OF ECONOMICS, UNIVERSITY OF WISCONSIN

In 1907, when the railroad commission of Wisconsin was given jurisdiction over public utilities operating in local communities, the legislature made an end of the franchise method of local control.

Franchises, as interpreted by the courts, were agreements for a term of years between public utilities and local governments, by means of which the reasonable level of rates and the quality of service to be rendered were fixed. Usually, also, they provided the terms and conditions under which the franchises might be resumed by the local governments and the property and plant sold to the public.

For years this system had not been working satisfactorily because of the recurring periods of conflict over new franchises or the extension of old ones. Moreover, the franchises lacked elasticity in adjusting rates and service to changing economic and technical conditions. Hardly a voice was raised in defense of the system at the extended hearings of the committee which was considering the new public utility law. It must be remembered that the consolidation of utility systems had already begun. The day of parochialism in public utility regulation was gone and public utility corporations were becoming subjects of statewide rather than of local concern.

Appearances before the committee indicated that the largest number of witnesses, including even some of democratic persuasion, was convinced that an agency more powerful and experienced than local councils had turned out to be was needed to deal with the utilities.

In the end even the public utilities were won over to support of the commission plan when it was proposed to take the important pioneering step of offering utilities, in return for the surrender of definite but short-term franchises, similar franchises of indeterminate duration. These conferred monoply powers without a time limit, but they provided that the commission might step in upon complaint or upon its own initiative to revise the rate structure and character of service to be rendered.

THE only important political groups opposing the commission plan were (1), the socialist group, which together with single taxers and certain other reform groups favored going at once to public ownership and operation; and (2), an irreconcilable wing of home-rule democrats who favored tinkering with the franchise method.

In the bill as finally passed, a concession was made to both of these elements. The localities were given an original jurisdiction over service and the power to fix rates subject to appeal to the commission. At the insistence of Professor John R. Commons, opportunity was also provided for the adoption of the so-called "sliding-scale method of regulation."

Nothing substantial was ever accomplished under these concessions to home-rule sentiments. From the first, complaints were lodged with the commission in the first instance as if it possessed an exclusive jurisdiction.

The wishes of the other groups were met, at least in part, by giving consumers, if the commission's ordinary powers over rates and service proved unavailing, two trump cards which might be brought into play. The commission might be asked to find that public convenience and necessity required a competing plant, thus making an end of the monopoly privileges and giving the consumer the benefit of competition if the municipality or some private concern were willing to undertake competitive operations. As a second alternative the municipality might at any time, after a referendum election, take over the utility systems by paying just compensation as fixed by the railroad commission and start public operation.

AT the present time a not inconsiderable body of opinion holds that the ordinary powers of the commission have been undermined past redemption by court influence.

It was, of course, necessary and eminently reasonable to safeguard the interests of the utilities by providing a method of testing out the orders of the commission in the state courts. But, in the opinion of a good many, the courts have again succeeded in substituting their judgment for that of the commissions in determining, not whether there has been confiscation of property—their proper function—but what, in effect, are reasonable rates.

At the outset the commission's greatest need was some sound and practicable procedure for fixing rates under monopolistic conditions. Accordingly, elaborate rules governing the accounting of the utilities were put into force with the view of determining what was the cost of rendering service. This cost should include, of course, only reasonable labor and material charges for operation, taxes paid to the government, and an amount for depreciation to make good the loss of invested capital as the physical plant wore out or became obsolete. In addition, the cost would have to include some reasonable return upon the investment in order to enable the utility to pay interest charges on bonds and leave some margin of profit for stockholders.

UNDER the franchise method of regulation the utilities had grown up without adequate control over or check upon their issues of bonds and stock and upon their accounting. Hence the newly organized commission felt that it would have to go to bed-rock, as it were, by finding out what physical properties the utilities now had and what these were worth. The value was generally taken to mean what it would cost on the average to reproduce the physical properties at the time. For the pre-war period this appeared to be all the more reasonable because in the cases where reasonable investment costs could be ascertained this figure and the cost of reproduction were not far apart. Moreover, it would enable the commission to disregard the old unreliable accounts and uncontrolled security issues and use as a basis for fixing the reasonable return upon the investment this initial valuation, adding thereto additional net investments in physical property when these were made.

AT first all went well with this method of rate fixing.

Beginning about 1915, however, prices of labor and material began to rise, reaching a peak in 1920, since when they have again declined. At this point investment costs and estimated reproduction costs parted company.

During this period some of the utilities in Wisconsin were successful in getting the courts to set aside the commission's rate orders on the ground that it would now cost more to reproduce these physical properties. Though they had cost less when installed, the utilities contended that the "fair value" of their properties, and hence the rate base, was the present cost of reproduction less *observed* depreciation or the so-called "present value."

In a decision affecting the Waukesha Gas and Electric Company the Wisconsin Supreme Court at first approved the commission's method of rate fixing. Later, however, in obedience to contrary decisions by the United States Supreme Court, the

¶ "THE *utility property of the power district is to be assessed and taxed for public purposes the same as the property owned by private utilities.*"

Wisconsin court reversed itself. This left the old commission without a definite base to fix rates except one which followed the vagaries of the hypothetical cost of reproduction. Its original efforts to base regulation upon a scientific system of cost accounting had been thwarted. It is one of the purposes of the legislation to be described in this article, more particularly the state utility corporation act, to bring about a return to the original methods.

WE have already referred to the two trump cards of municipal ownership and potential competition which the consumer had if commission regulation should prove unsatisfactory. The policy of inviting competition into a particular public utility market seems to have lost its effectiveness. The evils of ruinous competition are now so well appreciated that it may be doubted whether competition is anything more than an heroic remedy in a desperate situation. At all events, only the competition of a publicly owned and operated public utility gives promise of being continuous enough to bring results. Should regulation of private enterprise be ineffective, it seems to be that, for the time being at least, the state is willing to try the better economic policy of perfecting the other trump card of public ownership, while continuing monopoly.

THE threat of municipal ownership, provided for in the original law, has been rendered ineffectual because the 5 per cent limitation upon municipal indebtedness, in view of the increase in nonrevenue-producing activities of cities, left too small a margin for financing the purchase of costly utility systems now of statewide proportions. Moreover, the attempt to break up these integrated utility systems, with their economies of mass production, by municipal ownership would be, in most instances, a piece of economic folly. In addition, account must be taken of the fact that the purchase price of the segregated properties would very likely be enhanced by substantial allowances for severance damages.

Hence, with municipal ownership in most cases an empty threat, the new legislation proposes to rejuvenate the alternative of public ownership by making possible also either state or district ownership and operation of public utilities.

THE difficulties encountered in financing municipal ownership under existing constitutional debt limitations had already led to the enactment of a law whereby the purchase or construction of public utilities was made possible by issuing mortgage certificates secured only by the property or income of such public utility.

When this method of financing was proposed for the extension and improvement of an already existing plant, the supreme court held that such indebtedness was nevertheless to be considered as falling within the 5 per cent limitation. In order to cure this constitutional defect, a joint resolution amending the Constitution was passed by the legislature of 1929, that such indebtedness, secured solely by property or income, should not be considered municipal indebtedness in arriving at the above debt limitation. This joint resolution was again

How the "Municipal Power Districts" May Be Created:

"In order to afford a larger scope for public ownership, the Wisconsin League of Municipalities had sponsored a bill in the 1929 session which proposed to set up municipal power districts. In a revised form the same measure was submitted to and passed by the last legislature. Any two or more towns, cities, or incorporated villages, whether contiguous or not, may, by majority vote in each locality, constitute themselves a municipal power district."

passed, and the amendment will now be submitted to vote of the people at the general election in November, 1932. If the amendment is ratified municipalities will be allowed to finance public utilities by mortgaging the utility or its income without incurring a general indebtedness to be paid from taxes.

THE state of Wisconsin was settled in part by immigrants from eastern states that had expended large sums of public moneys for internal improvements. During and after the panic of 1837 many of these public undertakings had failed for a variety of reasons, leaving the states with a heavy burden of indebtedness. Immigrants from these states, known locally as "tax exiles," were instrumental in placing into the organic law of Wisconsin an iron-clad provision prohibiting the state from engaging in works of internal improvement and limiting state indebtedness to $100,000.

In recent years the opinion has been gaining ground that if the public ownership option in the public utility law is to be made really effective, some unit of government larger than the single municipality must become the carrier of this option. To this end both the state and the district, (the latter comprised of two or more municipalities,) were proposed as possible alternatives. Under existing constitutional provisions the state is most effectively debarred from any such activities. Even efforts falling far short of complete public ownership and operation and contemplating instead a program of state aid to private enterprise in extending the advantages of, let us say, electric power to the more remote and less densely populated sections of the state would not be financially possible at the present time.

TO amend the Constitution in this respect, a second joint resolution was passed by the legislature of 1931 and will have to be resubmitted two years hence.

This amendment recites that for the purpose of promoting the wider use of light, heat, and power in the home and on the farm and in order to encourage industrial development, the state and state utility corporations may engage directly or indirectly in the production, transmission, distribution, purchase, and sale of light, heat, power, artificial energy, electricity, gas, and by-products thereof. The state or its agencies may have all the powers useful in the conduct of such activities including the power to acquire property by condemnation. The legislature is authorized by general or special law to create state utility corporations which must be controlled and directed through stock ownership or otherwise by the state or subdivisions thereof. The legislature may provide for acquisition by the state and its subdivisions of stocks or other securities of state utility corporations or of private public utility corporations, and the state may in turn issue its own obligations payable *from any source of revenue,* but only when approved by a majority of the electors. The section is to be construed liberally and the power of the state and of its corporations is not to be limited by any other constitutional provisions.

It should be noted that the power of the state to finance these undertakings is to be made available for both public or private corporations. The amendment is designed to make possible the statewide integration and development of public utility systems and does not necessarily imply that public ownership and operation will, under all circumstances, be the means adopted.

In order to afford a larger scope for public ownership, the Wisconsin League of Municipalities had sponsored a bill in the 1929 session which proposed to set up municipal power districts. In a revised form the same measure was submitted to, and passed by, the last legislature.

Any two or more towns, cities, or incorporated villages, whether contiguous or not, may, by majority vote in each locality, constitute themselves a municipal power district.

Preliminary to such action the interested municipalities may request either the public service commission or the state utility corporation (to be described shortly) to assist them in developing a feasible working plan for such a district. After the plans are complete, but before the vote is taken, the commission is required to file its written recommendations and findings as to the feasibility or nonfeasibility of setting up such a district, together with reasons therefor.

In order to set up the district, the total number of votes in the approving municipalities must not be less than two thirds of the total vote in the proposed district. The result of the election is submitted to the commission. If the district as voted is smaller than that originally contemplated, the commission must file its approval or disapproval of the changed district. In the event of disapproval the district is dissolved.

The government of the district is in the hands of five resident directors chosen for five subdistricts by the chief executive officers of the municipalities comprising the subdistrict. In creating the subdistricts,

each should be comprised of an approximately equal number of voters, but no single municipality should contain more than two subdistricts nor is a single municipality to be divided in the creation of a subdistrict.

If a city in a power district has votes in excess of 50 per cent of the total, it is nevertheless to be divided into only two subdistricts. The remainder of the municipalities in the district are likewise divided into two subdistricts. A fifth director, representing the district at large, is then selected by the governor.

In the selection of directors each chief executive has one vote for each thousand votes in their respective municipalities, with a three-fourths vote necessary for a choice. The directors are chosen for 4-year terms with staggered expiration dates. Their compensation exclusive of expenses is fixed at $10 per day for attending meetings of the board or committees of the board or in the performance of duties assigned to them, with a maximum yearly compensation of $1,000.

All real and personal property with a situs in the district is subject to a direct annual tax sufficient to pay interest on the indebtedness and to discharge the principal of the debt in twenty years. It should be noted in this connection that the utility property of the power district is to be assessed and taxed for public purposes the same as the property owned by private utilities.

THE district is, of course, given the right of perpetual succession together with all the powers usually conferred upon public corporations, including the power of eminent domain. It may purchase, lease, and receive by gift real and personal property within or without the district necessary to the full or convenient exercise of its powers. When it acts as an employer it is subject to the Workmen's Compensation Act and, when operating a public utility, to the Public Utility Act.

The district is empowered, in fact the purpose of its creation is, to own, acquire, and construct an electric utility and extensions thereof, either within or without the district; also any water-power and hydroelectric power plant to be operated in connection therewith. It may operate and maintain such electric utility, selling light, heat, and power service to the public, to any municipality, to the state, and to state institutions. It is empowered to use and occupy any public highway, street, way, or place reasonably necessary for its purposes, subject, however, to local police regulation.

The district succeeds to the rights of the constituent municipalities to purchase or acquire under any franchise or indeterminate permit any public utility operating in whole or in part in such district. In the future, the district will grant indeterminate permits to private parties, and will reserve to itself the option to purchase.

How the "power districts" are to be organized, what functions they will perform, what authority they will exercise, how they will be financed, and wherein they will affect the utility industry as well as the jurisdiction of the state commissions, will be told in the following and concluding instalment.

WHAT JOHN BULL CAN TELL UNCLE SAM ABOUT

Audits of Utility Companies

The Views of a Country Banker

A British stockholder in a British public service corporation regards himself literally as a part-owner—and acts accordingly. One of his notions is to employ accountants who are responsible to *him,* instead of to the directors.

As told to

FREEMAN TILDEN

THE longer I sit with my head in my hands and gaze mournfully upon the shrinking book values of my little institution, the more the fact is forced in on my consciousness that the whole world, and this country more especially, is undergoing an enforced stock taking. It is the menopause of our capitalistic system; and we've got to meet it, not with nostrums and prosperity-around-the-corner choruses, but with the therapeutics of honesty and diligence.

In this article I am going to address myself bluntly to the men in control of our public utilities. They are the key men in this situation. At least, it seems to a country banker that they are; for where else can we rural fellows look for comfort and inspiration now? My rail bonds (all gilt-edged a couple of years ago) are now selling at Woolworth prices. I was one of those who fought shy of foreign bonds; but I never regarded Canadians as in the same category with "foreigners," so I took them on fairly liberally. And now look at the durn things! As I write, a favorite Canadian National issue, secured by the credit of the Dominion, has dropped below 79, and the elevator is still going down. I was strong for certain issues of American industrials —and now they are making me sick to look at them.

My utilities have stood up best and longest; and I can still show a good profit on a number of them. That's why I address myself to the men who control the destinies of these corporations.

THE time has come for a house-cleaning; and I don't mean pushing the rubbish behind the door, either. If we ever needed a vacuum sweeper, we need it now. We need a new set of conceptions as to the fundamental principles of investment and enterprise; and those conceptions must be shared both by the management of corporations and by the stockholders. Especially by the stockholders. I plead guilty, personally, to having been an unworthy steward of my own money.

When have I ever shown any immediate and personal interest in the conduct of the businesses I fractionally owned?

Did I ever attend a stockholders' meeting of the thirty-odd companies in which I own stock?

No.

Did I ever interest myself to know who did attend the meetings?

No. Did I interest myself to know what business was transacted at these meetings, or how the balances were arrived at, or who audited them, or anything else in connection with them, except the announcement that I was going to get a dividend?

I did not.

And the reason for this utter lack of interest in a concern where my money was involved?

Well, I was too busy, and I had confidence in the judgment of the men in charge of my companies. True, this confidence has been mainly justified. I have no concrete charges to make against the directors of a single public utility company in which I have invested. The sins of commission and omission committed by them during the past ten years have been precisely the sins I myself have committed in my own affairs. They saw nothing but a succession of bright sunrises, and so did I. They bit off more and faster than they could chew, and so did I. They forgot that human enterprise has to indulge in breathing spells, and so did I.

But the point is, we have reached the moment where we have got to unlearn our bad habits and learn some good ones. I appeal to the public utilities, because they are the strongest; and they are the ones that I, as a banker, am leaning heavily upon.

IN the first place, I call for an immediate and utter revaluation of the relationship between stockholder and director; and I make this appeal mainly to the stockholder, for I cannot see where the corporate heads are much to blame for the lame wit of a man who invests his money in a business (thus becoming a partner) and then never shows the slightest interest in its management until perhaps something evil happens, whereupon he cries like a stricken deer.

In the second place, I call for an immediate and expert examination into the accounting methods practised in our semi-public and public utility corporations—whether or not they are dictated by the state public service commissions.

I make the deliberate statement that many of our present difficulties may be traced to unwise—I do not say dishonest—methods of auditing, and to audits prepared by the wrong people. These bad practices are the result, not of any evil intent, but of a megalomania that had afflicted the whole world for a long period, and

especially since 1914. We have been attacked by that deadly germ known as Ambition. "By that sin fell the angels," said one of Shakespeare's characters. And he was not thinking of Ordinary Ambition, but of Inordinate Ambition. We wanted to be Bigger and Bigger and Bigger; and we never stopped to ask what the price is, of being That Big. And everything has its price.

Now, that's enough generalization on the subject, and we'll get down to cases. I want to speak first of the new conception of proprietorship which must come into the relationship of the American stockholder and director, before we can see any lasting improvement in our corporate affairs.

I HAVE just recently returned from England, where I had a chance to complete a first-hand study of these relationships, that I began making years ago. I think what I have to tell will be of interest to every man that owns a share of stock in our American corporations, and chiefly (because the intimacy is doubled by consumer-shareholding) in the public utilities.

There are three kinds of companies in Great Britain, comprehended in the provisions of the Companies Act of Parliament. There is, first, the "chartered company," in which the legal procedure is embraced in the terms of the charter itself. The Royal Mail Steam Packet Company is an example. We have no similar companies, naturally.

There is the "statutory company," created by statute of Parliament to perform a given service. Some if not all of the railways in Great Britain, are of this order. If we have anything akin to this, I don't at the moment recall it.

The third kind, of course most numerous, are known as "ordinary companies," and into this category fall the British public utility corporations.

These utility companies are, very roughly speaking, comparable to our own. Now, in the case of the chartered and the statutory companies, it will be observed that the charters always speak of the shareholders as "the proprietors." Observe that fact well, for it is implicit in the conception of the relationship of the British stockholder, and his company. It explains a good deal of what is to follow.

A FEW years ago I clipped from the editorial columns of a New York newspaper an editorial that expressed amusement because, at a stockholders' meeting of a railroad company where no "outside" stockholder had ever shown his head, a little 10-share stockholder suddenly appeared. His right to be present (and talk if he wanted to) could not be challenged. But it amused the directorship as much as though a real In-

¶ "A BRITISH *public utility shareholder would never consent to have the accounts of his company audited by any accountant or firm of accountants except one or more chosen by the shareholders, and representing the shareholders.*"

dian had appeared at a conference in the Department of Indian affairs.

Now a British shareholder wouldn't be able to see anything amusing in such an appearance. He regards himself as a "proprietor." Company meetings, it is true, are not usually overflowed by shareholders; but the management never knows when they might come piling in, and sometimes they come with blood in their eyes, and with volumes of embarrassing questions. It is a healthy situation, to my mind. Sometimes, as in the case of the last meeting of the Royal Mail Steam Packet Company, the shareholders are there with drawn swords. A London barrister told me, with a smile, that he had just come from a company meeting. He had attended as a shareholder. He had nearly broken up the meeting because he challenged the fact that the directors had voted a large bonus of money to themselves.

"I was not against the bonus," he explained. "The directors had earned it. But I happened to know that the auditors would not be able to pass the item. It was illegal by the terms of our company charter."

Now, when you get this point of view of "proprietorship," you understand why it is that a British public utility shareholder would never consent to have the accounts of his company audited by any accountant or firm of accountants except one or more chosen by the shareholders, and representing the shareholders. If you should tell (as I have told) a British shareholder that your company's books were audited by a firm of accountants selected by the directorship, or that the auditor might be a director or officer of the company himself, or *even* that he might be a shareholder in the company whose books came under his scrutiny—he would think you were crazy. Anything but an independent audit (by accountants chosen by the shareholders in meeting) is unthinkable to the mind on the other side of the water.

To be absolutely accurate, I ought to say that there is a single exception to the British rule I have mentioned: that, at the time a company is organized, the auditors may be selected by the officers, but this selection remains good only until the first shareholders' meeting, when the latter select their own representatives.

The intimate relationship between the British shareholder and his company can result in nothing but good. You might get the impression that the presence of shareholders would mean useless questions and recriminations and interference, but this is not so.

I'll give two instances that occurred while I was in London to show that *really interested* shareholders are not trouble-makers, but on the contrary, since they appreciate the mechanism of their operations, are inclined to understand any difficulties their officers may be laboring under. In one case, where the chairman announced that it was the opinion of the directors that the capital stock must be reduced, one shareholder rose and thanked the directors for their frankness and honesty—and there was no dissent to this sentiment. In another case, where the directors of the company once found that it was necessary

to pass a dividend, a shareholder cried:

"Never mind the dividend—what we want is *strength* in our company!"

And this, too, was acclaimed by all shareholders present as being good sense.

CONTRAST this with the yells of rage of American stockholders, who have never shown the slightest interest in the conduct of their company, when a bad situation develops. Those who have followed the difficulties of the Gillette Safety Razor Company, now being paraded in court, can readily guess that the attitude of the American stockholder is pretty much a "let-George-do-it" one. While business is good, he will not concern himself. He will not read his company's statement, or make any effort to understand it. But when evil days come, he draws his knife and looks for scalps.

Now, just as sure as you live, there are going to be radical changes in our system of management, of accounting, and of ownership representation, before we emerge from the sorry pickle we are in, and we may as well not only get ready for those changes, but contrive to have them wise and equitable ones.

CONGRESS is now in session, and before long we may expect to see a drive directed at the public utility companies. Are the latter vulnerable to just criticism? My opinion is that some of them are, and that an examination of the auditing methods, more particularly in the case of holding companies, will present a fine opportunity for the whirling dervishes of morality, and the friends-of-the-peepul, to damn a management which, considered as a whole, has been honest even when imprudent, and whose faults have been the faults common to all of us, from the bootblack to the chairman of the board.

A FRIEND of mine, who has been looking over my shoulder as I write this, says:

"Well, you may change the auditing methods, but when you get the American stockholder to take a keen personal interest in the affairs of his company, robins will be wearing snowshoes."

"And why shouldn't he?" I inquire.

"He should. I say, he won't. He is too lazy-minded; he has in the past profited too much by letting other people go ahead and do as they liked, and he thinks he is too busy with what he calls his own affairs."

Maybe so, maybe so. I believe, myself, that the American stockholder is going to be so chastened, before we get through with this present drab period, that he will adopt something of the method of thinking of the European investor. But if he doesn't get that far, he is going to do one thing, anyway; he is going to insist that the accountants who audit his company's accounts are of his own selection.

What that will mean, both for the stockholder and the company, and what is already being thought and done toward that end, I purpose to tell in my following article.

IN the March 17th number of PUBLIC UTILITIES FORTNIGHTLY *will appear the next article by* FREEMAN TILDEN, *who will discuss the proposed application of the British method of auditing to corporations in the United States, especially in the case of utility holding companies.*

As Seen from the Side-lines

If you are interested in public utility matters, you are interested in politics. They go hand-in-hand, as the salesman said of the two-pants suit.

* *

It has been some weeks since we talked of politicians and political developments together.

* *

But politics has seen some obviously important developments.

* *

Mr. Hoover is in. Postmaster General Brown says so.

* *

Mr. Roosevelt is in. He says so himself.

* *

Mr. Baker is in and out. But it's the League of Nations that's out. He's in.

* *

Also Mr. Traylor of Chicago, Mr. Garner of Texas, Mr. Murray of Oklahoma, not to mention the hopefuls and the animated lightning rods such as Mr. George of Georgia, Mr. Reed of Missouri, Mr. Pinchot of Pennsylvania, Mr. Coxey of Massillon, Ohio—oh, if that Senatorial Directory were only here!

* *

From the Republican front parlor, you can see the outcome without trouble or doubt.

* *

Mr. Hoover will be renominated. Such opposition to him as may arise will be vocal. It will be throaty in the second stage and probably tongue-tied ere the convention assembles. These Republicans have a way of ironing out their difficulties, even by resort to the overwhelming and flattening process of a steam roller, and of attaining an air of respectability just before the temporary chairman clears his throat, looks defiantly at the microphone, and then tells us what we must do to be saved.

It is not fashionable within the Republican Party to deny to its President the honor of renomination. Moreover, such denial would be an open confession of the misgivings, tribulations, and uncertainty to which the party might be heir. Also, there are those certain Southern delegations, with postmasterships and other vacancies always tempting them to the course of honorable loyalty, fealty, and devotion.

* *

We told you in these columns long, long ago that Mr. Coolidge meant it when he said it at Rapid City. We told you he would not be a candidate in 1932. He has himself said so, through the medium of the *Saturday Evening Post*, and we have formed the habit, common to New Englanders, of not questioning the permanency of his decisions.

* *

In short, Mr. Hoover is in, first, foremost, and alone.

* *

Let us look to the other side of the question.

* *

It is a question mark, but with some very definite affirmative pointings.

* *

Mr. Roosevelt has the pole. He may not be the best runner in the world, but he is out there in front.

* *

North Dakota and Wisconsin have pledged to him. Of course, it is quite true that the Democratic Party has ceased to exist there, except in name only and except when delegates are to be chosen to the national convention. What with La Follette, Shipstead, Populism, Farmer-Laborism, agricultural depression, and the like, the Democrats got themselves classed as reactionaries and lost their volume if not their usefulness.

BUT votes are votes, even among a depleted constituency, and we have not as yet seen any Democratic candidate other than Mr. Roosevelt who has been able to secure votes outside his immediate commonwealth.

* *

TAKE Vermont. There's another unblushing undemocratic territory which Mr. Taft was able to save from the wreckage along with Utah in that memorable 1912. Her state democratic convention has pledged to Mr. Roosevelt. It may be safely assumed, with greater assurance than the stock market contains, that the Democratic candidate for President, unless he be Calvin Coolidge or John Garabaldi Sargent, wouldn't carry Vermont in November. But the point is that these Democratic gentlemen are out for delegates and, for their purposes, delegates count as much in Vermont, North Dakota, and Wisconsin as they do in South Carolina, Mississippi, and Alabama, where Tom Heflin says they are counted both ways, and upside down.

* *

IN New Hampshire, which occasionally becomes Democratic by infection, out of fourteen delegate candidates for eight seats, twelve are pledged to Roosevelt, two to Smith, at the moment this is written not by his consent even if with his secret satisfaction.

* *

MR. Roosevelt can cause no admiration in me by any statement that he is not an active candidate. He is as active as propriety, in view of his declaration, will permit, and he and his friends, headed by the insinuating Colonel House, are as busy as a flock of bees on a rose in June.

* *

MR. Baker avows he will not go in quest of it. He waits for it to come to him. He will wait a long, long time. These places do not come that way.

* *

MR. Smith is the enigma—he and his attitude toward Roosevelt. Possibly there is a little coolness there. Possibly this aloofness is to foment the thought in the public mind that Roosevelt is not the legatee of Smith or the beneficiary of Tammany.

* *

OPPONENTS in the Southern tier of states may block Mr. Roosevelt. And they may not. He has friends there who are coursed into action by the Houses, Daniels, and Gregories. Only in pivotal states like New York, Pennsylvania, New Jersey, Massachusetts, Illinois, and Indiana can Mr. Roosevelt be headed off. And they probably will not head him off unless it is done under the ægis of Mr. Alfred E. Smith.

* *

MR. Smith said, after 1928, he would not run again. Perhaps he will stick to that. Possibly he will be infected by the thought that any Democrat can win, "and why not me?"

* *

WHAT do we then find?

* *

WE find in the Republican party a certain candidate who will be renominated and whose views on public utility regulation are pretty thoroughly known from the abundant records.

* *

WE find in the Democratic party a Mr. Roosevelt out front and the likelihood that he can be stopped only by a Mr. Smith.

* *

AND on public utility questions their attitudes are commonly known and they are found to be in harmony.

* *

MR. Roosevelt's water-power policy is satisfactory to such elements as headed by Gifford Pinchot, Dill of Washington, and Bryan of Nebraska. Mr. Smith's general policy on public regulation was satisfactory to them when he was governor; he actually endeared himself to them by his Denver speech as a candidate for President.

* *

BETWEEN these horns, you who may have contrary views on public regulation, take your choice.

John T. Lambert

OUT OF THE MAIL BAG

A Railroad Man's Views of Professors in Regulation

I HAVE just read Herbert Corey's article "The Plague of Professors to Regulation."

If I had my way about it, the railroads of these United States would erect a Corey monument, strike off a Corey medallion, arrange an annual celebration in honor of his birth, and perhaps set him up as a railroad Czar—all in recognition of his recent contribution to PUBLIC UTILITIES FORTNIGHTLY.

Viewed as a unit, it is one of the most interesting, instructive, and inspiring discussions of the subject which has come to my attention.

A RAILROAD MAN.

The Effect of Government Ownership on Railroad Rates

THE articles on railroad regulation recently appearing in PUBLIC UTILITIES FORTNIGHTLY tend to further emphasize how advantageous low transport service is to the American people—particularly when we compare rates with the railways' systems in other nations, both private and publicly owned.

During the World War our railroad rates increased but nowhere near as much as on the socialized lines.

If we take the 1921 freight rate we find that in 1923 and every year following and including 1930, the total freight rate reductions saved the American people the vast sum of $6,583,465,000.

Like taxes, everybody pays freight expenses so, when our railways reduce rates it helps every man, woman, and child in the nation.

That freight rates are too low on many products at the present time is clear enough when we find that our railways are able to make less than 4 per cent upon the capital invested in their property. No other great industry in the nation renders service on such small returns. Moreover, if we grant an increase to the lines of, say, 10 per cent, on some goods and perhaps 15 per cent on most of the luxuries, this would restore to the railroads a fair rate of dividends, say 5 per cent. This would cause the lines to expand; employ at least 150,000 additional men, and would go a long distance to restore general prosperity in America.

Passenger rates are not nearly so important as freight rates. Whatever they are it is impossible to increase the rates due to the bus, auto, and airplane competition. Nevertheless, we find that since 1921 passenger rates have been reduced in this nation with a total saving of over $516,000,000. Measured by service, our railroad rates are the lowest in the world, yet we Americans are best able to pay. However, the reduced freight and passenger service to the American people saved them $7,100,000,000 from 1921 to 1930. In other words, if the freight and passenger rates which were in effect in 1921 had remained in force during the nine years since that date, the American public would have paid more than $7,100,000,000 than it did pay.

When socialists attack the railroads of this nation they can make a case only by false insinuations, innuendo, and downright misrepresentation. Public ownership has been a failure the world over; not one such enterprise out of twenty has ever made a success. As a rule governments require two men and two dollars to accomplish the same results that one dollar and one man will achieve under private ownership.

—F. G. R. GORDON,
Haverhill, Mass.

Will the State Run the Utilities—or the Utilities Run the State?

I USE public utility services. I see no reason for questioning their cost to me. Yet the newspapers are filled with discussions about all sorts of questions relative to such services. What is all the rumpus about?

I have been reviewing my file of PUBLIC UTILITIES FORTNIGHTLY to find out, and conclude:

While the state is yet the creator of public utilities, the value to the public of utility

services no longer lies in the franchises or other rights relinquished by the state to utilities. *The whole value now exists in the service itself.*

If the state fails to support the utilities upon which it, in turn, has to depend largely for existence, the people will remodel the state to conform to a scheme of public life which will insure a survival of the utilities, regardless of what happens to the state.

—W. E. RICHMOND,
San Diego, California.

Two Errors Are Corrected

IN the December 10, 1931, issue of your publication, on page 739, appears as powerful, compact, and trenchant a statement on the subject of "The Trend in Municipal Power Plants," in the form of a letter from Mr. F. G. R. Gordon, of Haverhill, Massachusetts, as I have yet come across. The statement is so valuable in this time of controversy over the respective merits of privately owned and municipally owned plants, that I think your attention should be called to two apparent errors therein, which are probably only typographical, but which ought not to mar the otherwise perfect quality of the letter.

The first error is found in the fourth paragraph, where it is said: "From these official reports we learn that in 1922 the private-owned plants. . . ." I think the year 1922 is erroneous, and that the author of the letter meant to say 1902.

The other error occurs in the next paragraph, where it is said: "If the consumers of the electric service furnished by the private-owned companies had been forced to pay the municipal rates . . . they would have paid the vast sum of $2,220,000,000,000." It is obvious that if you add the other figures given as comprising this amount, namely, in round figures, $666,000,000 and $1,554,000,000 you get the total of $2,220,000,000 rather than that set forth above.

—WILLIAM H. SPEER,
General Attorney, Public Service Corporation of New Jersey.

The Ratepayer's Attitude toward Municipal Ownership

THE debate between Paul Y. Anderson and Aaron Hardy Ulm in the December 10th and December 24th issues of PUBLIC UTILITIES FORTNIGHTLY on the relative merits of government and private ownership recalls the experience of a congressional commission in the Philippines. This commission had gone into the rural regions to obtain native attitude at first hand. Coming across a tattered individual plodding behind a buffalo, they had halted him and instructed their interpreter to explain carefully the idea of independence to the native. The latter had listened attentively. Finally, "Ask him now if he would like independence," prompted one of the party of law makers. An emphatic answer came in reply.

"What did he say?" queried a solon.

"He says he would like it very much; he would like *two!*"

Current debates regarding the respective merits of government *versus* private ownership cover a wide range of subject matter—from philosophy and economics to ethics and expediency. The purpose of them is naturally to influence public opinion.

A cold appraisal of this effort, entirely divorced from any judgment of the relative merits of government or private ownership, brings one forceful conviction. It is that much of the printed and spoken argumentation on the subject is based on an almost complete lack of accurate knowledge of what the public actually thinks and—even more important—*feels* regarding the subject.

A recent study of public attitude toward a group of public utilities bears out this assertion. This study was a direct, first-hand inquiry into the attitudes of citizens and consumers of utility service. It was made in a territory where a publicly owned and operated utility was in direct competition with one privately owned and operated and where every person interviewed had had some experience with both organizations; the territory, moreover, was one in which public *versus* private ownership had long been an issue. The people interviewed formed an adequate cross-section of the population. Interviewers were not employees of either utility; they were not even residents.

The answers were emphatic and the feeling was well-nigh unanimous that the city-owned and operated plant should not be done away with or even disturbed! There could be no possible question of the tenor or strength of public attitude on this point.

The inquiry was pushed further. An exactly parallel series of questions were put regarding the privately owned and operated service. The general feeling was definite and emphatic that the private operation was essential and should not be interfered with in any way.

They were but little interested in relative efficiencies of operation under private or public operation, or in the ethics or economics involved. Even the matter of comparative rates was not in their minds.

Mr. and Mrs. Public were not doing much thinking on this subject. But they were doing a very considerable amount of *feeling*. Intellectual argumentation could have done little to have changed such an attitude.

—J. DAVID HOUSER,
New York City

What Others Think

The Effect on the Retail Dealer of Utility Merchandising

ALTHOUGH the "anti-merchandising by utilities" dispute has been raging for some time, it has been only recently that we have been provided with facts that both bear out and fail to bear out the contentions of the opposing parties. These contentions have been set forth in considerable detail in the pages of this magazine.

To establish a clear background of the controversy over utility merchandising let us review the whole situation briefly:

The utilities claim that merchandising by them is necessary (1) to build up their load, (2) to insure safety in the operation of appliances through the distribution of standard products, (3) to insure the distribution of the appliances themselves, in view of the alleged inability of private dealers to sell vigorously, on easy terms, and in far-flung places.

The retail appliance dealers answer these claims categorically and claim that independent distribution would (1) build up the load equally as well as utility distribution, (2) insure safety of appliances equally as well as utility distribution, and (3) insure the widespread use of appliances in that private dealers can sell even better than the utilities and serve just as sparsely populated areas. In addition, the private dealers claim that if the utility merchandiser's terms to the appliance-buying public are easier, then it must be at the expense of the ratepayers who must subsidize such liberality. There are other charges against utility merchandising, such as unfair competition in soliciting, billing, advertising, and other irregularities, but these are the main objections.

KANSAS and Oklahoma are now giving us the answer, both having adopted laws prohibiting the sale of merchandise by public utilities. What has been the result?

Mr. L. E. Moffat, editor of *Electrical Merchandising,* returned not long ago from these two states and reports conditions there as follows:

"The legislative action aimed originally at the gas utilities, initiated and promoted mainly by hardware and furniture interests, has had serious and immediate results on the business of the electrical distributors operating in these states and the manufacturers they represent. It has reduced the total appliance business by the $4,000,000 in sales formerly made by the power companies; it has closed over seventy retail stores which the power companies operated; it has thrown out of employment more than two hundred active retail salesmen. There are not enough dealers in these states who are sufficiently well financed and manned to take over the promotion and sale in anything like the volume done by the power companies.

"The department stores are not actively opening electrical departments. The hardware and furniture stores are seemingly satisfied in having recovered the business of selling gas ranges and gas heating equipment; they are not actively promoting electrical sales. Few new dealers have come into the picture. Farm electrification has been seriously hampered.

"In Oklahoma both gas and electrical utilities have accepted the law without contest. In Kansas the electrical utilities have accepted the law but some gas properties are continuing to merchandise in order to test its constitutionality. The Kansas bill prohibits the utilities even from servicing equipment already sold and complaints on this score from the public have been made to the utilities commission.

"Most of the $4,000,000 appliance sales made by the utilities came from the towns of 5,000 to 35,000 population. In these small communities the utility was often the only active merchandiser. With the power companies out of the business and

with independent dealers inadequate in number and ability the prediction is made that the chain stores operated by Sears-Roebuck and Montgomery Ward, which dot this territory thickly, will inherit the largest portion of demand business in electrical appliances. Furthermore, these stores see their opportunity and are extending active sales work toward capturing an increased share of the electrical appliance market."

ACCORDING to this, the anti-merchandising legislation originally designed to aid the struggling independent dealers seems to have been made to order for the chain stores and national mail order houses. But if Mr. Moffat, because of his editorial affiliation with the electrical industry, should be accused of partiality, we have the statement of Mr. Alfred L. Pierce, the able general manager of the efficient municipal electric works of Wallingford, Connecticut, to the effect that political influence in Canada brought about several years ago a prohibition against the sale of merchandise by the Hydro-Electric Commission. He tells us that in a year the sale of appliances from the independent merchants themselves had decreased to such a point that political influence was again exercised to reëstablish the merchandising activity of the Hydro-Electric Commission. Following this change, the volume of business in the sale of appliances resumed its normal strength.

Concerning his own municipal department, Mr. Pierce, in the 1931 "Report of the Wallingford Electric Works," states:

"During the last year, this department sold approximately ten per cent of the electrical merchandise that was sold or purchased by our customers. It makes no difference to this department who sells the electric ranges, cookers, etc., instructions are freely given by this department at no cost to the customer or the dealer selling the appliance. Usually when a merchandiser sells a range or other appliance his interest ceases when the sale has been made and delivered. Then this department's responsibility usually begins in the estimation of our customers.

"This is not questioned by this department. Repairs, instructions, and replacements are usually cheerfully made by this department regardless of what merchant has sold the appliance or where it was purchased. The only requirement that this department desires is that standard merchandise be sold. . . .

"Any electrical merchandise that we have in our showroom or warehouse will be sold to a merchant at prices comparable to those that he would receive from his own jobber. This has been done many times in the past, thus insuring quick delivery to the merchant's customer of dependable standard goods. It has been demonstrated many times in the past in different cities when a public utility ceases to merchandise and advertise, then the sale of such merchandise rapidly decreases almost to the vanishing point."

Here at last is one common ground upon which privately owned and publicly owned plants can both stand—defending their right to sell merchandise, notwithstanding the overtures made by the independent dealers towards support by municipal plants of their anti-merchandising legislation.

Now that the Kansas and Oklahoma laws have been in effect for over a year, it ought to be soon possible to get figures that will definitely show whether the sale of merchandise has increased or decreased since the utilities were run out of the business. An editorial in the January (1932) issue of *Public Service Management* claims that the sales of appliances for these two states last year were off $4,000,000.

—M. M.

REPORT OF THE WALLINGFORD ELECTRIC WORKS. Borough of Wallingford, Conn. 1931.

A Novel Plan to Make Business Regulate Itself

THE liberal weekly, *The Nation*, has been running an interesting series of articles by different contributors upon the same subject, "If I

Were Dictator." Some distinguished names appear in this series, but one of the most thought-provoking of the lot is the contribution by Glenn Frank, president of the University of Wisconsin.

The purpose of the article is to reveal what the author would do to improve the health and happiness of the citizens of the United States if he were given power to make, repeal, or modify laws or even the Constitution itself. Dr. Frank confines his attention, however, to what he considers our most pressing problem—the need for commercial regulation.

That Dr. Frank is keenly appreciative of the difficulties of this problem is ably set forth in the following passage from his article:

> "I do not want to join the oversimplifiers, and bring a false clarity to a situation that is admittedly complex. The cause of the depression that has swept the whole Western world cannot be captured in a phrase or its cure distilled in an epigram. It is not a simple sickness that has fallen upon us, and it will not yield to any simple and single remedy. A lush variety of causes lies at the root of the economic crisis of the United States. Political unrest the world around. Mounting armaments. Speculative mania. Abortive governmental attempts to stabilize certain commodity prices. The fall in the price of silver. Provincialism of policy in the fields of foreign trade, tariffs, and the exploitation of the world supply of natural resources. The direct impact of war-debt payments upon Europe and the indirect impact upon the United States. The gravitation of an undue amount of the world supply of gold into French and American hands. And so on to the end of a list I need not rehearse."

DR. FRANK finds much wrong with the modern set-up and he presents his finding with clarity, notwithstanding his own warning against "oversimplification." But he does not rush headlong into a blanket assertion that all basic industries ought to be made public utilities, or even that coal, bread, milk, and so forth, ought to be regarded as public utilities, such as seems to be the fashion just now with so many prescribers for our economic ills. He does not even suggest an immediate annexation of our present public utilities by the government, which seems unusual for one who is regarded as a "progressive" even in Wisconsin.

On the contrary, Dr. Frank would first give business a chance to regulate itself. He sets forth a definite program as follows:

> "Three possible roads of economic destiny stretch before us, each having as its goal a wider distribution of wealth; (1) the road along which economic leadership may seek to effect a wider distribution of national income by the way it administers wages, hours, prices, profits, and the other factors of business and industry; (2) the road along which political leadership, in the event that economic leadership goes renegade to its responsibility, may seek to effect a wider distribution of the national income by taxing incomes and inheritances more and more drastically; and (3) the road along which social leadership, in the event that both economic and political leadership fail or refuse to effect a wider distribution of the national income, will seek to effect a revolutionary overturn. I hope America may travel the first road promptly. I think it is a better road than the second. I hope America may never have to travel the third road. It lies entirely with politico-economic leadership to say whether or not the road of revolution shall ever be taken. There is no reason why America should resort either to political radicalism or social revolution, for the wider distribution of the national income, which is the major key to economic recovery, is a policy of enlightened self-interest for industry. We need neither a Stalin nor a Mussolini if enough of our *big-business* men are really *big* business men, and if they will think socially and act nationally respecting this central problem of the wider distribution of buying power, which, while imperative in the interest of social justice and social stability, is at the same time both the best insurance policy for capitalism and the best business policy for capitalists."

If the present writer had not seen the name "Glenn Frank" above this passage, he would have guessed that it had been written by Gerard Swope.

DR. Frank is so reluctant to see America embark upon a career of universal commercial regulation by the government, that he would not only first give American business leaders a chance to regulate their own houses, but, fail-

ing that, he would attempt to blackjack them into regulating themselves by persecuting them with the sword of taxation. This novel suggestion he states as follows:

> " . . . if this approach did not bring a prompt and hopeful response, after I had guaranteed the leadership of economic America against undue governmental interference with a business and industrial system that could guarantee the nation against social loss by effecting its own socially sound and economically efficient self-government, I should tackle the problem of providing the machine economy with an adequate market by the following method. I should call a congress of the leaders of the nation's great businesses and great industries and say to them: 'I am imposing upon the income of you and your enterprises an unprecedently high tax. I shall not insult your intelligence by trying to prove to you that the government needs all the money this tax will produce. It does not. At least, it does not for meeting the normal expenditures that a government must make. Save in times of grave unemployment crises, my colleagues and I would have difficulty in finding wise ways to spend the money this tax will presumably produce. I hope that you will do your best to prevent my government from getting more from this tax than an intelligently economical governmental program needs. I hope you will deliberately trick the government out of a large part of this tax by rapidly shifting the organization of your enterprise to a thoroughly modernized basis that will permit your distributing larger and larger amounts through higher wages, shorter hours, and lower prices. In short, this is not a tax for needed revenue, but a club to enforce farsighted business policy.' "

INCIDENTALLY, Dr. Frank has no patience with those who would cure our defective system of distribution by restricting our effective system of production. He says there can be no such thing as "surplus" wheat or cotton as long as there are people hungry or cold for want of clothing. Such a surplus is a false surplus due entirely to our ineptness in distributing buying power along with commodities to be bought. He says "business leadership has no right to regard as a surplus the goods for which an authentic human need exists." It is, therefore, our distribution system that must be toned up, rather than our production system that must be toned down.

—F. X. W.

IF I WERE DICTATOR. By Glenn Frank. *The Nation*. December 23, 1931.

A Campaign against the Bus and Motor Trucking Industry

A PUBLICITY drive, sponsored by an organization known as the Fuel-Power-Transportation Educational Foundation, with offices in Columbus, Ohio, has recently been launched against any limitation upon the power of the various state commissions to regulate busses.

The state commissions have been circularized and given the benefit of certain publicity material indicating that the bus interests are receiving an undue share of the benefits of our public highways, and are attempting to receive a yet larger share.

A large wall chart, sent by this Foundation to the commissions and others upon its circulation list, contains some interesting conclusions. According to this chart, the cost of our public highways has increased from a little less than 900 million dollars in 1923 to nearly 2,300 million dollars in 1930. But the record of the respective contributions by those who use the highways and those who do not use them shows a pronounced trend against the pocketbook of the nonusing taxpayer to the corresponding benefit of the taxpaying motorists.

In 1923, of the total of nearly 900 million dollars, only 200 million dollars were paid by users of the highway through taxes on gasoline and motor

vehicles. The balance, or nearly 700 million dollars, was paid by property owners through appropriations, Federal aid contributions, and other miscellaneous sources of taxation. In 1930, of a total of 2,247 million dollars, only 862 million dollars were paid by users of the highway, leaving a balance of 1,385 million dollars to be paid out of general tax funds.

THE purpose of this educational drive by the Columbus, Ohio, organization is apparently to awaken the mind of the American taxpayer to the full extent towards which he is being held up by unregulated bus and motor truckers and is being jockeyed into a position of paying for their right of way. The drive is apparently not aimed against the private motor car user, because he makes no special use of the highway for profit and is also a member of the nonusing taxpayer population to the extent that he pays taxes upon property assessments; it is against motor busses and motor truckers that the campaign seems to be aimed; those who make a profit out of the use of the highways and yet seek to avoid the payment of a proper share of taxes therefor through the evasion of regulation.

The information so far adduced by the Foundation is both valuable and interesting. It remains to be proved, however, that the legitimate bus industry as a whole does not, through the payment of special taxes, defray its share of the expense of maintaining our highway system. If the Foundation will lend its powers of investigation towards this source, it will have performed a real service in clearing up a long-standing and vexatious problem of utility regulation.

—M. M.

WALL CHART, and other publicity information concerning the public's interest in protecting its highways. Fuel-Power-Transportation Educational Foundation. Columbus, O. 1932.

Unsuspected Plots of the Power Trust for Picking the People's Pockets

AN anonymous contributor to a modest periodical[1] of protest against the electric utilities is disturbed over the profits which the power industry is indirectly making out of prize fights and bridge games. The encouragement of public exhibitions of the manly art is enabling the utilities, he says, to extract large profits from the pockets of the people. To quote his own words:

> "Someone has estimated that when a prize fight of prominence is held at night that it increases the utility revenue in greater New York by $18,000 because the people will sit up later than usual to hear the description of the fight broadcast from the ring side. Of course the radios use current, and some lights are burned that would otherwise be turned off. This $18,000 is nearly all net profit because all the utility has to do is to shovel a little more coal under the boilers, and it doesn't cost any more to read the meters and make out the bills.
>
> "Maybe the utilities promote some of these things just to make your meters run faster and longer; and if one prize fight is so profitable to the utilities in one city, how great must be the profit when the whole country is considered, when radio has made nighthawks out of so many people?"

Then comes the bridge game indictment which is as follows:

> "Bridge games also keep people up late at night, and keep the lights burning, and for fear there would not be enough of this you can learn to play bridge by radio, and no utility will object to your attending this kind of night school. The general public has but little conception of the 'load-building' schemes that the utilities can think of."

[1] *Rate-Payer*. Vol. 1, No. 1. Cleveland. (Rocky River), Ohio.

The writer concludes with the searching question: "It is any wonder that we are in dire need of adequate regulation?"

THE regulators of public utilities have lately been accused of a multitude of shortcomings but never before of being off their guard in stopping schemes of the electric industry for increasing its business—"load building" as it is technically called. In the numerous investigations of commission regulation and of the electric industry no one has undertaken to find out how far the power companies are responsible for prize fights and bridge games.

This appears to be a brand new idea.

Consider what the promotional activities in respect to prize fighting and bridge games alone may amount to in swelling the income of the electrical industry! The author of the article in *Rate-Payer* says that according to the estimate of "someone" a single prize fight will add $18,000 to the income of the electric companies in greater New York alone, because of the fact that the fans will sit up later than usual to hear about it over the radio.

One can readily understand that on such a basis the fight followers of the entire country may increase the revenues of the industry by something like a million dollars annually assuming an equal number of fans throughout the country per million of population, and supposing that there are two or three prize fights a year.

The author says that this is practically clear profit. If so, it must be admitted that it is a palatable morsel for the industry. With a profit like this in sight it would be unreasonable to assume that the industry would try to sidestep it unless forbidden to do so. But if the industry has gone so far out of its way as to promote prize fights for the purpose of increasing its electric business, a very high degree of sagacity must be conceded to its leaders, however much they may have lacked in the cherished altruistic qualities.

CONSIDER, too, the matter of bridge-game promotion. No one appears to have estimated how much the industry makes out of bridge games through the negligence of our state legislatures and state regulatory commissions in preventing that sort of exploitation. But the income from this source must be much greater than that from prize fights. Major exhibitions in the prize ring are infrequent as compared with sessions at the bridge table. Say there are five times as many lamps burned as the result of contests over the card tables as there are lamps lighted on account of encounter in the padded ring, and, not forgetting radio broadcasts for the benefit of those who want to learn to play bridge by radio, one might reasonably guess that the added electrical income would be five times as much as that produced by prize fights or, say, $5,000,000. This would give a total added income from both sources—practically all clear profit—of about $6,000,000 every year.

By this time it must have dawned upon the reader that the ingenious author's idea in respect to these promotional schemes of the electrical industry is very much underdeveloped. He has made only a feeble beginning. How about additional revenue produced by broadcasts of World Series baseball games and by the autumn crop of football encounters? This must run into the millions of added revenue, notwithstanding the fact that the fans do not have to sit up at night to listen in.

Even when all of these activities are considered it is just a scratch on the surface. What might not be said of the indirect revenue coming into the pockets of the electrical companies as the result of the broadcasting of ordinary daily and nightly radio programs? Perhaps this whole broadcasting business is just an exploitation scheme shrewdly hatched for the benefit of the "power trust."

THEN, too, there are many business-getting or load-building schemes for which everybody knows the elec-

trical industry is directly responsible. Electrical refrigeration, for example, is one of them. Water heating is another. And there is the vacuum cleaner, the electric iron, the mangle, the coffee urn, and the Lord knows how many other devices calculated to add to the income of the electrical industry. Even the electric clock threatens to occupy a niche, although perhaps not much more than an ornamental one, in the hall of load-building possibilities.

There, too, is rural electrification, a new mine that is being increasingly worked. More business for the electrical companies. More revenue.

Moreover, if we go far enough back, we can easily understand that the entire power load is nothing more than a business-getting scheme of the electrical industry which started with nothing but a lighting load. The power business must add very materially to the electrical income. If the extensive use of current resulting from business-getting schemes is bad for the people of the country, the electrical industry has undoubtedly much to answer for.

So far so good. Up to this point the going is easy enough. The possibility of creating and applying regulatory brakes, however, is another story. It is a problem of real proportions. Is regulation at fault? If so, who is to blame for it? Is it the public service commissions or the state legislatures? Is this a matter which Congress ought to deal with, or is public ownership and operation of the electric industry the proper remedy? It is all very well to make a blanket charge that the regulation of the industry is inadequate, but it is no simple matter to work out detailed specifications of changes needed to meet this situation.

Take the state commissions, for example. These regulatory bodies have no authority aside from that granted to them by the states. They, therefore, cannot be blamed for not preventing prize-fight fans from listening to radio broadcasts of ring encounters, nor can they stop the furnishing of current of bridge players for the very good reason that there is no direct or implied authority in the statutes permitting them to do so. In fact the laws of the states forbid in most emphatic language any sort of discrimination against any class of consumers of electricity, including prize-fight fans and bridge addicts. They could not prevent the extension of service to the ring side itself to say nothing of ordering it to be cut off from private houses during broadcast periods or during the progress of bridge games. It is manifestly unfair to charge the commissions with neglect of duty in failing to stop the income of the electric industry from either of these sources. There is nothing in our laws which authorizes state public service commissions to interfere in any way with bridge games. The enormous popularity of this game in social circles has been of such a recent growth that the need of regulation in connection with it does not seem up to this time to have been presented to our state legislatures. Not having charged public service commissions with this particular duty, the commissions must be given a clean bill of health in respect to it.

The commissions, however, may justly be charged with failure to prohibit many other load-building activities of the electric industry. They have often permitted the introduction of promotional rates, the obvious purpose of which is to increase the electric business and, therefore, add to the revenues of the companies.

Quite recently there has been a decided trend toward rural electrification throughout the country. This the state commissions have encouraged. Although this is an added source of revenue, the utilities would emphatically deny that it is all clear profit. If there is anything in what they say, that would be a good alibi for the commissions if charged with neglect of duty in allowing this additional electric load. But there must be many cases in which the commissions have not intervened to prevent the extension of electric service where that service would produce

some profit to the companies. If so, the commissions may be justly charged with that delinquency. But their record is unassailable so far as prize fighting and bridge games are concerned.

Any negligence in that respect must rest squarely on the shoulders of state legislatures. Assuming that to be so, the next question would be what the states ought to do about it.

Should the states prohibit prize fighting and bridge playing? Or merely require those who indulge in these pastimes to do so during daylight hours?

OPEN prize fighting might be prohibited, but it would be as difficult to stop bridge playing or to regulate it as it would have been to stop or regulate the wearing of corsets by women in the gay nineties. We have had too much trouble in enforcing prohibition to have much confidence in the ability of the government to interfere with bridge playing even by the adoption of another constitutional amendment. If bridge playing is allowed, how is anyone to know whether electricity in the houses is being burned merely for the lighting of bridge tables or for other purposes? A curfew law might be passed requiring all lights to be out at 9 o'clock, but that would be very inconvenient as well as hard to enforce. We must not be too critical of state legislatures who have not as yet evolved a workable method of dealing with this important matter.

Naturally the next question which arises is how far this may not be a problem for the Federal government to solve. What cannot or will not be done at the state capitols may be a matter to be taken care of in Washington. Let us consider this aspect of the matter.

Prize fighting at first glance would seem to be purely a state or local matter. The power to prohibit or regulate it, most persons would say, is one of the rights which the states retained on the formation of the Federal government. It is not interstate commerce—unless the sale of a few tickets outside of the state in which the exhibition takes place might be sufficient to bring the whole matter within the power of Congress on the theory that such a disposition of tickets constitutes interstate commerce. The reader will recall that it has been argued that the sale of security issues of utility companies throughout the nation is interstate commerce. If that is so, why not the sale of tickets to prize ring exhibitions? Perhaps the Federal government can get in through that door. The advocates of states' rights, however, would probably put up a stiff battle before they would allow the Federal authorities to invade this field.

IF the reader fears there is no device by which the playing of bridge games can be brought within the regulatory power of Congress, he should not be without hope. A simple bridge foursome played by neighbors in any state would not, it is true, be regarded as interstate commerce; nor would it be commerce with foreign nations or with the Indian tribes. But suppose two of the players happen to be visitors from another state, or foreign visitors, or assume that the game were between Indian and white citizens. Might that not be considered interstate commerce, or foreign commerce, or commerce with the Indian tribes? If so, there would be the further question of how far Congress might control purely interstate bridge games and the sale of electricity in connection with them, in order to prevent them from becoming a burden upon interstate games or games with citizens of foreign nations or Indian tribes. Be that as it may, the fundamental difficulty remains. It would be just as hard for Congress to adopt a satisfactory policy of regulation as it would be for the states to do so.

THERE is one thing, however, that Congress *can* do; it can forbid the broadcast of ring-side accounts of prize fights and also of bridge-game instructions. This, at least, would cut the revenues of the electrical compa-

nies coming from those sources. But that is a matter which is up to the Federal government and not to the states. Any criticism for failure to act must be leveled at Congress and not at the state legislatures or state regulatory commissions.

Finally there remains the question whether the whole prize-fight-bridge-game-utility problem would not be satisfactorily solved by the government ownership and operation of electrical plants. This is a subject upon which nothing has yet been written. The burden of proof would seem to be upon the advocates of the government ownership theory. No advantage one way or the other would appear to the casual observer, so far as remedying the evils flowing from prize fighting and bridge playing are concerned. It must be conceded, however, that the advocates of government ownership would have one advantage. The believers in private ownership would probably agree that there would be far fewer load-building schemes under government ownership than under private ownership. The subject, however, is one of great perplexity and must be approached in a sympathetic public spirit.

Above all the virtue of patience must assert itself. As Andy, of broadcasting fame, would say:

"Remember the old slogan; Rome was not burned in a day—or something."

—H. C. S.

RATE-PAYER. Vol. 1, No. 1. Cleveland, Ohio. 1931.

The Holding Company as a Modern Frankenstein

MOVING picture audiences have been shocked and thrilled by the talking screen version of Mary Shelley's horrifying novel "Frankenstein"—the story of a brilliant but overzealous young surgeon who succeeded in creating life in a monstrous corpse composed of arms and legs and other organs collected from graveyards and assembled on the operating table of the medical genius. Having no soul and very little sense, but superhuman strength, this creature lumbered through a brief career of crime to the ultimate destruction of itself and its unhappy author.

This gruesome tale served as the text for the latest work of Professor I. Maurice Wormser of Fordham Law School. The author has long been a student of the corporation and its shortcomings; now in his book he compares it to a senseless, destructive robot which goes by the significant name, "Frankenstein, Incorporated."

Professor Wormser has a liberal mind which refuses to be confined to juristic strait-jackets. Because of that, he is indeed a *rara avis*. But, although he avoids the all too frequent obscurity of the lawyer's mental processes, he does not always avoid the obscurity of language with which the brethren of the bar are so sadly afflicted. For this reason his first fifty-five pages, in which he traces the history of the corporation from Greece and Rome through the continental renaissance and the Elizabethan age, may possibly be boring to the layman.

But be not dismayed, Professor Wormser is but performing the legal ritual of "laying the foundation." It is when he fires into the abuses of the modern corporation that the professor reveals himself as a serious thinker upon the subject of legal economics—that mystic middle field that seems to be shunned alike by the lawyers and the economists who upbraid each other from their own bailiwicks, and fail to perceive that in this modern day the law is but the outward expression of commerce, and that the business of

government and the business of business can no longer be locked off into water-tight compartments for purposes of either study or practice.

"AND what," one might ask, "is really the analogy between Frankenstein and the modern corporation?"

Professor Wormser tells us. The most popular definition of the corporation is that given by Chief Justice John Marshall. He called it "an artificial being, invisible, intangible, and existing only in contemplation of the law." In other words, mere man has called into theoretical existence a "juristic person," with no existence in fact. This legal phantom has all the prerogatives of a flesh-and-blood citizen, subject to such personal limitations as voting, marrying, or making a will. In addition it has one advantage over the flesh and blood citizen; it is immortal.

Now that we have called this fictitious person into being for purposes of commercial expediency, how is it behaving? Is it a docile Caliban or a raging Frankenstein?

Professor Wormser gives us much evidence of corporate abuse. There is the use of the "one-man corporation" to avoid personal obligations; there is the watering of stock. But heading the list he puts the holding company. Regardless of whatever legitimate advantages it may possess, Professor Wormser holds it responsible for the exploitation of stockholders to the advantage of promoters; the evasion of the Sherman and other anti-trust laws, and the threatened breakdown of our system of public utility regulation. We catch a glimpse of the ultimate possible consequences of these abuses. Corporations are growing larger. Through the holding companies and numerous mergers, basic industries will ultimately be reduced to practical monopolies. Regulation and possible governmental annexation of these super-centralized industries will become necessary to protect public interest, and thus capitalism, in the stock corporation, will have nourished a viper in its own bosom and Frankenstein, Incorporated, will have murdered his own master.

BUT let us not jump to the conclusion that Professor Wormser is an extremist. He does not think that any of these evils is inevitable if those who control Frankenstein, Incorporated, can be brought to a timely appreciation of their peril. His views to that effect can be best summed up in the last two paragraphs of his book which are as follows:

> "Corporate capitalists, if they would meet the serious situation which now confronts them, must regard themselves as 'trustees.' They must look to the welfare not only of themselves, but of the general public. So far as they are unwilling to do so, their parent—the state—must compel such consideration. A socialized corporate capitalism is, therefore, inevitable, —a capitalism which will preserve all the benefits and advantages of individual economic freedom, modified and tempered by an observance of, and consideration for, the social and economic welfare of the people at large.
>
> "The franchise from the people which grants to corporations their invaluable privileges and immunities, involves the assumption of corollary duties and obligations. The vassal owes a duty of the utmost good faith to its creator, the people. As matters of good business and public policy alike, great corporations owe, and should heed, and must pay, this debt owing to the community from which they have obtained and gained so much. They rest under a social obligation deeply implied both in fact and in law. If they turn over a new leaf promptly and pay this debt; if they forthwith meet this obligation, much positive national gain will result. If they fail to heed and pay it, the community which created them will be justified in so regulating and controlling all their future acts and conduct that these shall not run contrary to the ends of sound public policy and social utility."

—F. X. W.

FRANKENSTEIN, INCORPORATED. By I. Maurice Wormser. New York: Whittlesey House. 1931. $2.50.

Will the Extension of Utility Service Lead to a "Federal Public Utilities Commission?"

THE question whether public utility regulation shall proceed along local, state, or Federal lines has come in for a good deal of special attention.

In this age of the ever-expanding scale of business to national and international proportions, Professors Eliot Jones and Truman C. Bigham, in their recently published book, find a considerable place for local regulation—provided the utilities are primarily urban in character, and provided, also, that the several utilities have the right of appeal to the state commission. Service is regarded as an essentially local problem. The case for local regulation of rates, although less clear, is held to be valid when the municipalities are prepared to bear the expenses and do not interfere with the welfare of other communities served by the same companies.

The right of municipalities to regulate their utilities is one thing; whether they will exercise this right is quite another. Jones and Bigham think that, in practice, the state commission already plays a dominant rôle in regulation and, furthermore, that its importance will increase, first, because cities will not wish to bear the expenses of regulation, and, second, because public utilities (except water) through far-reaching combinations are becoming more statewide in character.

Some discussion of Federal control, both existing and potential, appears in the book. The authors confess a lack of information as to the extent utility services now rendered are interstate in character, except for gas and electricity. A brief survey of the available information leads them to conclude that rather more than less service in the future is likely to be rendered on an interstate basis.

The pertinent question is then raised: "Must state regulation be superseded in large measure by Federal regulation?"

The answer is, "no," apparently on the ground that the amount passing over state lines is as yet comparatively small for all utilities except electricity and gas. And even electricity, gas, or any other service rendered interstate, is held not to fall beyond the reach of the state regulatory commissions because of their control over retail distribution.

As proof of their contention, Jones and Bigham cite a number of United States Supreme Court decisions in which the right of states and municipalities to control retail distribution of utility products and services drawn from other states is fully sustained.[1]

Probably the least defensible portion of their conclusions relates to the control of the interstate movement of products and services. It is claimed that the states may regulate such commerce, providing no direct burden is placed thereon and providing Congress has not asserted its plenary powers.

It is difficult for me to conceive of any effective regulation of rates and service which places no direct burden upon interstate commerce. It is, I think, commonly agreed that regulatory agencies must possess power to grant or not to grant a license to operate a utility, if regulation is to be effective. In Buck *v.* Kuykendall,[2] the United States Supreme Court ruled that the state of Washington exceeded its powers when it refused to grant Buck a certificate of convenience and necessity to operate a common-carrier interstate auto stage line between Portland, Oregon, and Seattle, Washington. The refusal to grant the certificate was defended on the ground that Portland and Seattle were already adequately served by

[1] Public Utilities Commission *v.* Landon, 249 U. S. 236, P.U.R.1919C, 834; Pennsylvania Gas Co. *v.* Public Service Commission, 252 U. S. 23, P.U.R.1920E, 18; Missouri ex rel. Barrett *v.* Kansas Nat. Gas Co. 265 U. S. 298, P.U.R.1924E, 78.

[2] 267 U. S. 307, P.U.R.1925C, 483.

connecting railroad and motor lines.

In declaring this action to be illegal, the court, although admitting the right of Washington to control interstate commerce in order to promote safety upon the highways and conservation in their use, ruled that the right could not be supported when its purpose was to prevent competition. In other words, interstate commerce (common carrier or public utility) is no more subject to the state regulatory power than is transport by private carriers. And this amounts to saying that the state which attempts effective regulation of an interstate utility will be firmly chastised by our highest court.

THE purpose of public utility regulation is quite as much to prevent or modify competition as it is to prevent unrestrained monopoly and its abuses. A survey of the regulatory history of the steam railways will readily convince the sceptical reader on this point. For this reason, Jones and Bigham's reliance upon state regulation of interstate commerce, in the light of a Supreme Court decision, must be viewed with some doubt.

It may be that, at least for the control of gas, electricity, and communication, it will be necessary to establish a great Federal Public Utilities Commission somewhat on the pattern of the Interstate Commerce Commission. Certainly steps in this direction have already been taken in Congress by Senator Couzens and others who are seeking to broaden the powers and jurisdiction of the Federal Power Commission.

I HAVE touched not at all on the more conventional features of the book; they can only be mentioned in this review. After presenting a brief history of each leading utility (except steam railroads) and their leading characteristics, extensive attention is directed to franchises, commissions, valuation, rate structures, service standards, accounting and capitalization, combinations, public relations, and public ownership.

Professors Jones and Bigham, all things considered, have produced the best general work on public utility regulation which has yet appeared. Public utility executives and employees, government officials, professors, editors, and the electorate will derive profit from its pages.

—RALPH L. DEWEY
Ohio State University

PRINCIPLES OF PUBLIC UTILITIES. By Eliot Jones and Truman C. Bigham. New York: The Macmillan Company. 1931. 799 pages. $4.25.

Other Articles Worth Reading

LOOK AT SEATTLE. By Dr. John Bauer. *National Municipal Review.* January, 1932. A survey of the municipal power project on the Pacific Coast.

MILKING THE UTILITIES. By Mauritz A. Hallgren. *The Nation;* December 30, 1931.

MORE REGULATION. By Hugh M. Foster. *North American Review;* January, 1932.

ORIGIN AND DEVELOPMENT OF RADIO LAW. By William J. Donovan. *Air Law Review;* November, 1931.

POLITICAL ACTIVITIES OF THE POWER TRUST IN CALIFORNIA. Address by Franklin Hichborn at the Public Ownership Conference, Los Angeles, September 28th to October 1st, 1931. *Public Ownership.* January, 1932.

RECENT DEVELOPMENTS IN GAS PIPE-LINE LEGISLATION. By George H. Manning. *Gas Age-Record.* January 16, 1932.

ST. LAWRENCE: FOR POWER AND SHIPS. By S. Beach Conger. *World's Work.* February, 1932.

SUPREME COURT AND INTERSTATE COMMERCE COMMISSION. *The New Republic.* January 20, 1932.

WHO PAYS FOR THE ROADS THE TRUCK USES? By R. C. Fulbright. *Nation's Business.* February, 1932.

The entrance of the bus and truck into the transportation system has brought with it many problems for legislators and public. In this article, Mr. Fulbright discusses these problems in a way that will give you a clearer picture of the entire situation.

The March of Events

Holding Company Investigation Is Ordered by House

THE House of Representatives on January 19th ordered the most far-reaching investigation of public utility ownership and control attempted by a Federal agency. The investigation is to embrace every form of interstate and international public utility except the railroads which were investigated last year. Dr. Walter M. W. Splawn, who conducted the investigation into railroad holding companies is to direct the inquiry, it has been stated. The resolution is as follows:

"*Resolved*, That for the purpose of obtaining information necessary as a basis for legislation, the Committee on Interstate and Foreign Commerce, as a whole or by subcommittee, is authorized to investigate (1) the ownership and control, direct or indirect (through stock ownership or control or otherwise), of stock, securities, or capital interests in any public utility corporation engaged otherwise than as a common carrier by railroad in the transportation of persons, or the transportation, transmission, or sale of property, energy, or intelligence, in interstate or foreign commerce, by holding companies, investment trusts, individuals, partnerships, corporations, associations, and trusts, and (2) the organization, financing, development, management, operation, and control of such holding companies, investment trusts, partnerships, corporations, associations, and trusts, with a view to determining the effect of such ownership and control on interstate and foreign commerce, and, to the extent necessary to determine the effect of such ownership and control, to make like investigation of public utility corporations so engaged.

"The committee shall report to the House the results of its investigation, including such recommendations for legislation as it deems advisable.

Hearing Held on Revision of Commerce Act

THE Interstate and Foreign Commerce Committee of the House of Representatives on January 19th opened hearings on the Rayburn bills, which provide for a revision of § 15a of the Interstate Commerce Act. This action followed the recommendation by the Interstate Commerce Commission that Congress repeal the "aggregate-return-on-aggregate-value" rule and the recapture provisions.

Commissioner Eastman, chairman of the commission's legislative committee, was the first witness. As stated in a bulletin by John E. Benton, general solicitor for the National Association of Railroad and Utilities Commissioners:

"He began with a history of § 15a, showing that the House Committee was originally opposed to the provisions in question, and in a report to the House in 1919 foretold the very difficulties in administering that section which have since been encountered by the commission. He reviewed the administration of the section by the commission, and showed that though amounts due to the commission under the recapture provisions for the years which have passed since enactment of the Transportation Act, except as to a few small roads, remain to be determined in the first instance by the commission, and thereafter in the courts. He said an estimate had been made of the amount probably due under the recapture provisions, as approximately $378,000,000. Of this amount only $13,000,000 has been paid to the commission. Of this $8,796,000 has been paid under protest, and the commission's right to retain the same remains to be determined by litigation. The amount paid without protest, and thus not subject to future litigation, is, accordingly, less than $2,000,000, or approximately one half of one per cent of the amount estimated to be due.

"This $378,000,000, Commissioner Eastman said, is probably an overestimate, the same having been made upon values determined by the method which was condemned by the United States Supreme Court in the O'Fallon Case.

"Commissioner Eastman explained the rate base feature of H. R. 7116 at length. This provision, which is for a rate base determined by accounting methods based on investment, was originally recommended by the commission, as stated in our Bulletin No. 7–1932. Some of the commissioners still favor it, and others prefer H. R. 7117, which is like H. R. 7116, except that it omits any aggregate rate-base feature altogether.

"The commission recommends the repeal of recapture *ab initio*, and the return of such amounts as the commission has received to the roads which have paid them."

A statement was presented expressing the views of the National Association of Railroad and Utilities Commissioners.

Protest Made against Practices of National Association

THE present conduct of the affairs of the National Association of Railroad and Utilities Commissioners is criticized in a letter recently sent to all members of the organization. The letter is over the signatures of Milo R. Maltbie, chairman of the New York Public Service Commission; Clyde L. Seavey, president of the California Railroad Commission, and Leon O. Whitsell, W. J. Carr, M. B. Harris, and Fred G. Stevenot, members of that commission; and Theodore Kronshage, Jr., chairman of the Wisconsin Public Service Commission and A. R. McDonald and David E. Lilienthal, members of the commission.

These commissioners express the belief that the present practices of the association imperil state regulation, and they state that either the association "must change its course" or the undersigned commissioners as state members "now see no alternative but to withdraw." The conditions to which objection is made are covered by three resolutions which were introduced at the recent convention held in Richmond, Virginia, at which time the resolutions failed of adoption.

A resolution was offered requiring that all the time of the convention be devoted to the activities of commission members for the purpose of excluding nonmembers and discharging the attendance of a large number of utility officials and representatives who have been regularly invited to attend these yearly meetings.

Another resolution was presented proposing an amendment to the constitution of the association to provide that the yearly convention be held permanently after 1932 at Washington, D. C., for the purpose of providing a permanent meeting place, and to eliminate criticism that the conventions had become more or less "junketing trips." Opposition was expressed to holding meetings in "centers of pleasure" such as Miami, Glacier National Park, and Asheville.

The other resolution proposed that the association discontinue the "supervision" of the publications known as PUBLIC UTILITIES FORTNIGHTLY and PUBLIC UTILITIES REPORTS in order to put the association in a position where it would not be "favoring, endorsing, or supervising any commercial publication that desired to print the decisions of the commissions."

Alabama

Electric Demand Charge Is Resisted as Inadequate

THE Alabama Utilities Company, according to the Montgomery *Advertiser*, has filed an application for rehearing in the Troy rate case, in which proceedings the public service commission required the company to reduce its rates on mass electric current supplied to the municipality. The company contends that the demand charge of $1.25 per kilowatt ordered by the commission on all over 500 kilowatts consumed per month is not sufficient to cover fixed charges on the additional capacity it will be necessary for the company to install as the demand of the city increases. This additional capacity, it is stated, will cost approximately $150 per kilowatt to install, and with fixed charges as low as 14 per cent the demand charge should be at least $1.75 per month for all over 500 kilowatts.

The contention is also made that there should be no block in the energy rate less than 0.7 cents per kilowatt hour, and that the company cannot deliver energy after the consumption increases, for less than this amount. When the consumption of the city of Troy, under the existing contract, reaches 200,000 kilowatt hours per month, the company maintains, much larger percentage of energy will have to be produced in fuel-burning plants in which bare production costs will be as much as 0.7 cents per kilowatt hour.

Mobile Requests a Study of Public Utility Rates

A PETITION by the city of Mobile for review by the public service commission of electric power, gas, and street railway rates was completed on January 22nd. This was in conformity with an authorization for such action voted by the city authorities.

In recommending such action Commissioner Hartwell, of Mobile, introduced comparative statistics to show that the cost of electricity is substantially higher in that city than elsewhere. He submitted specifically a comparison of electric rates in Kansas City, Kansas, Kansas City, Missouri, and Mobile.

California

Going Value and Annual Depreciation Figure in Rate Case

As part of the evidence in behalf of the San Joaquin Light and Power Corporation in proceedings before the commission dealing with rates, an annual depreciation reserve of $1,030,000 was put forward as a proper allowance by J. S. Moulton, engineer. He submitted calculations on both a straight-line basis and a 5 and 6 per cent sinking-fund basis using an actuary system. The Fresno *Bee* states:

"Moulton said he estimated the life of the plants to be from fifteen to forty years, including equipment. Hydraulic power generation equipment and plants he estimated to run from twenty to fifty years, transmission equipment from fifteen to thirty-five years, distribution equipment from fifteen to thirty-five years, installations on consumers' premises, commercial lamps, and lamp equipment with street lighting equipment, ten and fifteen years, while that of the general office structure is from fifteen to fifty years, and its equipment fifteen years. . . .

"Moulton's figures on depreciation include many things other than physical wear and tear on the property. It is designed to cover practically all hazards and he said it might be called either depreciation or insurance so long as the corporation is protected against loss. . . .

"In reaching his conclusions he adopted to some extent the mortality method as applied to human life by insurance actuaries and said that in recent years it has been found that the mortality curve if carried far enough would cover other physical property as well. He said that the Interstate Commerce Commission has taken cognizance of this theory."

The company attempted to show a going concern value of $8,000,000, based upon a theoretical study of development costs submitted by G. S. Jacobs, a witness for the company. The Fresno *Bee* informs us:

"Jacobs defined going concern value as 'the cost incurred in recreating a growing public utility over and above the cost of construction and for acquisition of physical properties and other tangible assets. It involves the cost of obtaining and developing the attached business, operating the properties during the period of business attachment, and of carrying the necessary portion of idle plant until such time as all consumers are attached and served and all the physical facilities installed and operated."

Opposition to the inclusion of this amount in the rate base was expected as it was said to be the contention among representatives of consuming interests that the cost of development had already been paid by consumers through annual operating expense, and that the corporation, since its founding, had earned 8 per cent or more each year without consideration of this theoretical cost.

Connecticut

Commissioners Gain First-hand Information in Water Case

The members of the public utilities commission, during their investigation of the rates of the New Haven Water Company, spent two days last month in making a tour of inspection of various watersheds and stations of the company. During the hearing much data was introduced which seemed conflicting and it was thought necessary personally to visit the various reservoirs and storage places and watersheds in order to get first-hand information.

Testimony was introduced at the hearings that the large consumer receives a lower rate than the average consumer. According to the New Haven *Times*, it costs 8 cents to pipe 100 cubic feet of water from Lake Gaylord into the city, but it was testified that some consumers have been receiving it for 5 cents per hundred cubic feet.

A dispute arose as to a charge for an unused fire hydrant. Frederick W. Perry, a New Haven lawyer and counsel for the town, told the commission that the company based its right to charge for the unused hydrant on the claim that as long as the means of service existed the charge could be made. William B. Gumbart, counsel for the company, said that the company did not want the responsibility of removing the hydrant to rest on it. He said the hydrant was located near a school and that its removal would result in a fire hazard.

District of Columbia

Traction Merger Is Again Before Congress

THE subcommittee on public utilities of the House District Committee has started hearings on the pending resolution permitting a merger of the traction facilities in the National Capital. Representative Loring M. Black of New York, chairman of the committee, according to the Washington *Star*, believes that extensive hearings are not necessary because there is a general feeling that there should be a merger of the traction facilities. Legislative action at an early date was considered more desirable than long drawn-out hearings.

Electric Rate Reduction Is Compromised

REDUCED household electric rates in place of the 4.2 cents formerly charged are in prospect for consumers of the Potomac Electric Power Company as the result of an agreement reached by the public utilities commission and the Potomac Electric Power Company after several conferences.

Following this agreement for a general reduction, the commission on January 26th granted the request of the company to abandon the flat-rate plan of charging for electricity for household use that has been in vogue for years. New domestic rates were fixed as follows:

"Schedule A, for any residential purpose—For the first 50 kilowatt hours of monthly consumption, 3.9 cents per kilowatt hour; for the next 50 kilowatt hours, 3.8 cents; for all over that, 3 cents.

"Schedule K, for separately metered residential current for other purposes than lighting—3.9 cents per kilowatt hour for the first 10 kilowatt hours, and 2 cents for all over that."

Under these rates the commission allocated $331,461 of the total cut of $850,000 to residential schedules, or 38.5 per cent. The company had asked to have 31 per cent, or $271,000 so allocated.

Gas Rate Reduction Planned for Washington

A SCHEDULE calling for reduced gas rates was submitted to the Central Public Service Corporation of Chicago, controlling the Washington Gas Light Company for approval on January 26th by officials of the Washington utility, according to a report in the Washington *Herald*, which states:

"The new rates, if approved by the operating utility, will be acted upon by the board of directors of the gas light company and announced publicly. . . .

"Upon receipt of this information, People's Counsel Richmond B. Keech last night said he would abandon his plans to file a petition with the public utilities commission calling on that body to cut local gas rates.

"Mr. Keech had planned to base his petition on the fact that the gas company increased its net profits during 1931 by approximately $500,000 instead of reducing them by the $400,000 which officials believed would result from the present schedule put into effect in October, 1930."

Indiana

Effect of Commission Rate Reduction Order Is Studied

CUSTOMERS, city attorneys, and official boards of the seventy-six cities and towns served with electricity by the Public Service Company of Indiana have been studying the effect of the emergency rate schedules ordered for February 1st for application throughout the company's so-called "south system" by the public service commission. The Indianapolis *News* states:

"Copies of the emergency rate schedule, which will stand by order of the commission until hearings can be held in numerous cities and towns on rate reduction petitions, have been distributed.

"The full effect of the new rates on consumers has not yet been tested in relation to prevailing rates for various classes of consumers in the many towns. Company officials estimate the new schedule will result in a savings of $427,765."

Mayor Joseph H. Campbell of Bloomington is quoted in the Indianapolis *News* as stating that "Bloomington's fight for lower electric rates is not ended." He expressed the opinion that the result of the cut would be only a small saving monthly for resident users although he views the commission's order as a step toward "ultimate relief."

Kentucky

Would Give Commission Additional Powers over Utilities

TELEPHONE, gas, water, and electric light companies would be brought under the supervision of the railroad commission if a bill introduced on January 25th in the state senate is enacted into law, we learn from the Louisville *Courier-Journal*. The commission would be empowered to fix rates for these utilities, in accordance with the practice in several other states.

The commission would be authorized to make a charge against each public utility operating in the state ranging from $25 to $3,000, depending upon the volume of business done by it. This charge would vary according to the gross receipts of the company.

Security issues would also be placed under the power of the commission.

Maryland

Rules to Govern Taxicab Control Are Drafted

THE Maryland commission has made a preliminary draft of proposed rules to govern the control and operation of taxicabs in the city of Baltimore and in proximity thereto, and on January 18th ordered a hearing with a view to establishing and promulgating such rules. The proposed rules govern permits, taxicabs and equipment, operation of taxicabs, operators, insurance or bond, and violations and penalties.

This action is taken under the authority of a law enacted in 1931 relating to cities of more than 50,000 population. The city of Baltimore and points in proximity thereto seem to be the only territory affected.

Baltimore Council Sidetracks Fare Reduction Resolution

THE Baltimore city council on January 25th sidetracked a resolution urging the United Railways to reduce the 10-cent car fare. Objection was made to the measure because of the pending ordinance reducing the park tax and the appointment by the council of a committee to study the park tax question. It was also suggested that the city council could not take any effective action in securing a rate reduction because the question of fares is entirely in the hands of the public service commission.

Supporters of the fare reduction resolution, however, have taken the position that three rides for a quarter instead of a 10-cent fare would produce more business and that the council might very well urge the company to make this reduction while the council has under consideration the question of a tax reduction.

The tax measure now before the council provides for a reduction of one per cent a year until the present 9 per cent is lowered to 2 per cent of gross receipts. It is also provided in the ordinance that the payment of the tax shall be subordinate to payment of interest on the company's bonds. Securities of the United Railways are widely held in Baltimore, and it is feared that default of interest would be a most serious thing, especially in the case where the holders are widows or orphans, says the Baltimore *Post*.

The company is charging its 10-cent fare under a Supreme Court ruling that the company is entitled to a return of 7.44 per cent on its valuation. Chairman Harold E. West of the public service commission is quoted in the Baltimore *Sun* as stating that in view of prevailing conditions it would be practically impossible for the commission in the near future to find a valuation for the United Railways property at a low enough figure to effect any reduction in fare and at the same time permit the utility a legal monetary return. He said that the company is now earning a return of approximately 3½ per cent, which is less than one half of the amount to which it is entitled by law to earn."

The United management was said to be skeptical of the theory that reduced fares would aid railway revenues, but the reduction was under discussion at a meeting of the board of directors on January 26th.

Massachusetts

Truck Operation of Two Railways Declared to Be Illegal

THE department of public utilities, according to the *United States Daily*, has directed the attorney general to begin an action in the supreme judicial court to stop by mandamus or injunction the violation of law in which the department holds the New York, New Haven & Hartford Railroad is engaged in its transportation of freight through its subsidiary, the New England Transportation Company. At the same time the department directed the attorney general to take such action as he deems proper with respect to similar operations by the Boston & Maine Railroad through its subsidiary, the Boston & Maine Transportation Company. The *Daily* states:

"A law enacted in 1925, it was explained in the department's order in the case relating to the New Haven Railroad, provides that a railroad corporation may operate motor vehicles for the transportation of passengers or freight upon such routes as public convenience and necessity, in the opinion of the department, may require, and subject otherwise to the laws applicable to motor vehicles.

"Following the passage of this law, it was further explained, the New Haven furnished the funds necessary for the organization of the New England Transportation Company and acquired all of its stock, the par value of which is $1,500,000. The railroad also has advanced to the subsidiary, on notes, sums exceeding $1,300,000.

"Immediately following the organization of the subsidiary the railroad filed a petition for permission to operate motor vehicles either by itself or through the subsidiary. The department ruled that it was necessary for the applicant to specify the routes over which service was to be rendered, and this was done as to passenger service, for which authority subsequently was granted to the New England Transportation Company."

The department states that no application has been filed by the railroads for the operation of motor vehicles for the carriage of freight upon routes in the commonwealth, and no authority has been so granted.

Minnesota

Utility Franchise Rejected in St. Paul

A PROPOSED franchise for the Northern States Power Company was rejected by St. Paul voters on January 12th. The voters had to decide whether they preferred a reduction in electric rates and higher taxes, or rates 5 per cent higher than Minneapolis electric schedules and an unchanged tax rate. The Minneapolis *Journal* states concerning the election:

"The choice was being made through affirmative or negative votes on three franchises, proposing to give the Northern States Power Company the right to sell electricity, gas, and steam in St. Paul for twenty years. The franchises provide for elimination of a gross earnings tax, in return for which the company has promised to reduce electric rates."

The St. Paul city council immediately took preliminary action to grant permits to the company to operate for one year, and it then began moves to curb the utility, obtain lower power and light rates for St. Paul, and to start a municipal plant for supplying steam and current to down-town city-owned buildings, says the St. Paul *Dispatch*.

Mississippi

Regulation of All Public Utilities Is Urged by Governor

GOVERNOR Martin Sennett Conner, in his inaugural address, recommended legislation for the regulation of those public utilities which are not now controlled by the state railroad commission, and proposed an increase in the taxes of motor carriers of passengers and freight that are not bearing a just share of highway cost, we learn from the *United States Daily*, which quotes the governor as follows:

"The distribution of power and gas and the operation of common carriers of freight, passengers, and messages are essential to modern commerce and directly affect the welfare of our people. The propriety of governmental regulation and supervision of all persons, firms, and corporations engaged in these enterprises is everywhere conceded.

"These public utilities enjoy certain priviliges not exercised by the general public and they, in turn, must assume certain duties and responsibilities peculiar to those who supply the commodities and services so essential to public welfare. It is for the good of themselves, as well as for the protection of their customers and patrons and the public in general, that wise and just governmental control should be established.

"This control should protect the public against unfair rates and charges, and guarantee adequate and efficient service, to the end that public utility operations may be useful but not oppressive. It should encourage and safeguard every honest interest and every laudible undertaking of the public utilities so that investors may have confidence in our laws, our officials, and our people, and so that our state's general welfare may be promoted.

"We have a commission charged with the duty of regulating certain public service corporations, but no adequate provision has been made for the regulation of other public utilities, particularly power and gas distributors. I urge you to enact legislation for the proper regulation and control of all public utilities, with equal regard for their welfare and the public interest, and that you establish a state agency clothed with ample powers and means to enforce such regulatory control."

Missouri

Ordinance Is Proposed to Acquire Street Railway Stock

At a special election on April 12th the voters of Kansas City are to vote upon an initiative ordinance containing a comprehensive plan for acquisition, financing, and operation of the street railway system in Kansas City as a municipally owned utility. The unusual feature of this proposal is that the city would condemn the capital stock of the company and the price would be fixed by a jury of citizens according to what the stock is worth. The city would assume the bonded indebtedness.

The franchise under which the company operates provides that the city "may purchase and acquire said property at and for the value thereof, fixed for rate-making purposes by the public service commission." The commission has valued the property in a rate case at over thirty million dollars. Advocates of the ordinance state that according to market quotations all the outstanding stock is worth $1,789,321. The outstanding bonds amount to $14,689,900.

The "Car Riders Defense Committee" in an advertisement in the Kansas City *General Progress* asks the voters "Will you vote for a 6-cent fare or for a 10-cent fare?" This advertisement, reading like a stock prospectus, continues: "The ordinance provides a 6-cent fare, decrease in cost of living, better conditions for street railway employees, better times—more work." The committee assures the voters that they can pay for the system in increased fares and not own "even a sliver in a single street car" or they can save four millions a year in car fares and own the entire system, and this four million dollars "will be spent in Kansas City for food, clothing—for necessities of life."

The voters are told that "the dividends disappear with the eastern security holders and the interest charges are paid by special tax like our parks and boulevards or any other public improvement."

The ordinance provides that the cash fare on the street car, after acquisition by the city, shall be 6 cents with a 3-cent fare for children under twelve years and children free if accompanied by a relative. The control of the street railway is to be put in the hands of "five Kansas City people who are well and favorably known." None of them, it is said, has held public office or been active in party politics but all are known to the public for their "activity in movements for human welfare, kindness, and justice between men." The committee assures the voters that these people don't need to know anything about running a street railway, because their job is only to see that the car riders get a square deal.

The possibility that politicians might pad the pay roll with useless employees does not worry the committee. They state in their advertisement: "Let the politicians do their utmost, go the limit, raise the limit, pad the street railway payroll until every unemployed man in Kansas City is on that payroll, and wouldn't it be a blessing?"

Substitution of Token System for Permit Cards Is Asked

A proposal by the Kansas City Public Service Company to substitute a token system for permit cards was presented to the public service commission on January 22nd by Powell C. Croner, president of the company. With the elimination of the permit system the schedule would include a 10-cent cash fare or four tokens for 35 cents.

The only opposition to the proposed rate was by the head of an organization seeking municipal operation of the street car system in Kansas City. He informed the commission that he regarded any rate above 6 cents as too high. The cost of operation, according to his figures, is 5.6 cents a passenger. Mr. Groner suggested that his study of the company's affairs did not take into consideration the bonded indebtedness and other phases of fixed charges. The Kansas City *Star* says:

"The average fare paid by car riders now is 9.1 cents, according to Mr. Groner. He estimated that under the token plan the average would be 8.8 cents. Mr. Groner cited the peak of the permit car system found 66,000 of the cards in use in one week. That number has dwindled to about 36,000 cards in use each week. At the peak of the permit card system the cash fares were 37 per cent of all fares. Now the cash fares make up 61 per cent of the total fares. That was to show the riders were using the permit cards less and less, probably because unemployment and irregular working days have made the permit cards no saving to the car riders."

New Jersey

Trenton Fare May Increase

THE Trenton Transit Company, according to an announcement in the Trenton *State Gazette*, is considering an increase in cash trolley fares from 8 to 10 cents. In a letter to the public utilities commission, the company stated the plan of selling weekly commutation tickets for a dollar would be continued, although the experiment to date had proved a loss. The sale of these tickets was begun last November with the hope that at least 8,000 would be distributed weekly. During the Christmas week, sales reached 4,500, but the average had been approximately 4,000. The plan, according to the president of the company, was to continue the sale of tickets for eight weeks. Rankin Johnson, president of the company, is quoted in the *State Gazette* as saying:

"The weekly pass is undoubtedly popular, but can apparently be justified permanently only by an increased fare to be collected from the occasional riders. This increased fare would affect only occasional riders for the reason that the frequent riders would be enabled to purchase his local transportation at a dollar a week, which means according to our records, an average cost per ride for the pass-passenger of less than 5 cents.

"A majority of our bus routes now require a 10-cent fare in the Trenton zone."

New York

Commission Advises Regulation of Natural Gas

STATE regulation of the production and transportation of natural gas is recommended by the public service commission in a report made public on January 17th, following an exhaustive investigation of the industry. We read in the New York *Times:*

"The report emphasized in connection with this recommendation that the natural-gas supply of the state is not inexhaustible and should be conserved. It also declared that 'the introduction of competing gas supplies in territory adequately served by artificial gas is not economical and not desirable from a public viewpoint.'

"Other major findings of the report are:

"Present sources in New York and northern Pennsylvania should continue to supply large quantities for many years.

"Geological conditions indicate that new commercial sources may yet be discovered in southwestern New York.

"Unrestrained competition between natural gas operators should be abolished in favor of a pooling of interests.

"Recent gas field and pipe line developments should make natural gas which has a higher heating value than artificial gas, available to areas now served only by the manufactured product."

Revision of Electric Rates Is Demanded by Association

A SYSTEMATIC investigation of the electric light rates of the New York Edison Company and affiliated companies serving New York is demanded in a brief filed with the public service commission by Bainbridge Colby in behalf of the Washington Heights Taxpayers' Association. William L. Ransom, in a brief in behalf of the companies, opposes a new rate case and insists that the reduced rate schedules approved by the com-

mission last year should be given a fair trial before a new rate case is begun.

The association contends that the rate reductions put into effect are discriminatory and oppressive to the small and poor consumer, and represent an increase to 60 per cent of residential consumers. They demand a much larger reduction than that offered last year by the companies and approved by the commission. Quoting from the brief:

"The question presented in this case is whether the commission should undertake a systematic investigation of electric rates, and make a determination under the powers of the state, or should content itself with the concessions made by the companies, which the complainants regard as totally inadequate."

Mr. Ransom's brief in opposition to the association's move declares that the present electric light rates are an improvement over previous rates, and that it would be improper to interrupt the fair and adequate trial of the uniform rates now in force, and "most unwarranted to divert time and money to rate hearings in the present state of public treasuries and utility business." The brief adds:

"All of the energies and resources of the commission and the municipalities and their staffs, as well as those of the companies, ought, we submit, at such time as this, to be conserved and utilized for the more remedial tasks present economic and financial conditions impose, rather than for the consideration of facts and decisions which lately have occupied the attention of all concerned for fully a year. Expenditures that can be avoided need now to be avoided, in the interests of taxpayers, customers, and investors alike.

"The financing of the public utilities and the maintenance of their capacity for service during this period of stress are acute and serious problems, in which the coöperation of the commission and its staffs is essential."

The further point is made that the companies had agreed to a reduction in revenues of $5,000,000 only on condition that a reasonable time would be allowed to try out the new rates, and that this period should be a year. Complaints against the new rates, it was said, are decreasing and "further improvements can and will undoubtedly be made when adequate data has been obtained from a reasonable period of experiment."

Pennsylvania

Utility Seeks to Recover for Loss of Revenue under Injunction

THE Highspire Water Supply Company has filed proceedings against two Highspire residents and their bondsmen to recover for the failure of the residents to pay their water bills and for loss of revenue because of an injunction which was in force against the company for a period of seven months.

The residents objected to the meterization of the service in the borough and the abandonment of the flat rate service. A new schedule was to go into effect on January 1, 1930, but an injunction was obtained against the company to prevent it from enforcing its new schedule pending disposition by the public service commission of complaints that the new rates were unjust. The commission dismissed the complaints, and the company alleges that it lost $1,166.08 in revenue during the time the injunction was in force.

South Carolina

Investigating Committee Reports on Power Utilities

THE South Carolina rate investigating committee last month completed its work and submitted to the governor, speaker of the house, lieutenant governor, and railroad commission copies of its findings and recommendations. The committee concluded that the state's five large electric utility companies "not only are making more than a fair return on the present fair value of their properties, but some of them likewise are through improper application of depreciation charges causing a shrinkage in the true value of their securities."

The committee presented a plan to require the placing of meters on all electric transmission lines crossing the borders of the state as a means of allocating the property of interstate utilities used within the state and thus have a basis for fixing rates.

The recommendation was made that the tax law be amended to provide that the one-half mill kilowatt-hour tax should be applied only at points of sale, thus exempting exported power, line losses, and energy used

in company operations. Quoting from the *United States Daily:*

"Pointing out that interest on capital indebtedness is the principal cost in a hydroelectric plant, whereas fuel and labor are the main costs in a steam electric plant, it was recommended that the income tax law be amended to allow interest as a deductible item. The present law was declared by the committee to be 'particularly discriminatory' against the hydroelectric plants because their principal costs are not deductible, as are those of the steam plants.

"It was recommended that a limit be placed on the taxing powers of cities and towns and on license fees imposed by municipalities on electric utilities.

"'No additional special taxes should be imposed upon the electric public utility companies,' the report said, 'but instead, as other sources of revenues are found, the taxes imposed on the companies should be steadily reduced so as not to exceed 10 per cent of the companies' gross revenues. As taxes are reduced, rates should be lowered just as consistently.'

"The committee submitted and recommended the enactment of a law for the regulation of electric utilities by the railroad commission, and proposed that a bureau of rural electrification be established.

"It was proposed that the utilities be assessed for the cost of their regulation, and that the business done by municipal plants outside the corporate limits of the city be assessed in the same manner.

"The committee also recommended that the rates charged by municipal electric plants be subjected to regulation by the commission in the same manner as the rates of other electric utilities.

"It was further recommended that the relations between electric utilities in the state and holding and affiliated companies be subjected to commission scrutiny and approval, and that the operating companies be forbidden to make any contract with a holding or affiliated company without prior commission approval."

The railroad commission on January 21st ordered that the Duke Power Company and Southern Public Utilities Company, both of Charlotte, the Broad River Power Company of Columbia, the Carolina Power & Light Company of Raleigh, and the South Carolina Power Company of Charleston submit to the commission a balanced rate structure covering rates for all classes of consumers of electricity based upon and in accordance with the findings of the special power rate investigating committee.

Officials of some of the power companies, following the report, took exception to the valuation of their properties as fixed by the committee. P. A. Tillery, vice president of the Carolina Power & Light Company, said that it was not clear how the committee could have arrived at the value of the utility property devoted to use in South Carolina "since so far as we are aware, no inventory or detailed inspection of the property was made by the committee's staff."

Texas

Merchandising Is Restrained

An injunction against the San Antonio Public Service Company restraining it from engaging in the merchandising of gas and electric appliances, says the *United States Daily,* has been granted by Judge Charles A. Wheeler in a county district court. The court also held that the company should be enjoined from operating sight-seeing tour busses not run in connection with its street railways in San Antonio.

This action was taken upon petition by the attorney general in a suit for receivership and forfeiture of the company's charter, as well as an injunction, on the ground that the merchandising business is beyond the powers granted by the company's charter. Attorney General James V. Allred stated that the proceeding was a test of the right of all public utilities in Texas to engage in the retail merchandising of appliances. Notice of appeal has been given by attorneys for the utility company.

Washington

Tacoma Decides to Take Over Utility Business

The city council of Tacoma has passed an ordinance providing for the taking over of the business of the Puget Sound Power & Light Company, as its franchise has recently expired and the city council has refused to grant a renewal.

The ordinance authorizes city officials to execute and deliver an agreement for the purpose of transferring customers' contracts to the city service.

The Latest Utility Rulings

A Conditional Sale of a Power Plant to a City Is Held to Be a Violation of Debt Limitation

THE United States Circuit Court of Appeals, sitting in the state of Missouri, is the latest tribunal to pass upon the question, which has been raised in a number of states during the last few months, of whether a conditional sales contract between a municipality and a manufacturer and seller of power plant equipment for the sale by the latter of an electrical plant is a violation of statutory debt limitation, where the plant is to be paid for out of its own profits and the title is to remain in the seller until the complete purchase price is paid.

The case arose as the result of a contract between the city of Campbell and the Fairbanks, Morse & Company for the purchase of a municipal light plant. A privately owned power company having a franchise to operate in the city of Campbell sued for an injunction to restrain the city from operating such a plant in competition with the private company because of the alleged illegality of the conditional sales contract. Two interesting points were raised: first, was the private company, in view of the fact that its franchise was not "exclusive," entitled to injunctive relief against the operation of the municipal plant? Upon this point the lower court held that although the private company's franchise was not exclusive in the sense that the city might not grant a similar right to another utility, it was exclusive as against any one who attempted to exercise the privilege granted to the private company. In other words, the private company, as the holder of a franchise to do business in the city of Campbell, was held to be entitled to protection against *illegal* competition.

It was argued from this that the sales contract for the municipal plant by avoiding the competition afforded through the operation of the plant so purchased would be illegal. This raised the second question; namely, was the sales contract void as an evasion of constitutional debt limitation? The lower Federal court held that it was and granted the injunction. The United States Circuit Court of Appeals affirmed the lower court on both points. *City of Campbell et al. v. Arkansas-Missouri Power Co.*

Electric Generation Distinguished from Transmission for Testing Interstate Commerce Status

ALTHOUGH it is more probably a decision involving taxation than one involving regulation, a recent opinion of a Federal district court, sitting in Idaho, should be of interest because it is based upon the very debatable question of the status of electric current in interstate commerce, a question that is destined to be as important in the field of regulation as it is in the field of taxation. Some months ago, the Supreme Court of the United States, in a case involving an Ohio state tax on natural gas, distinguished between gas moving "through" pipe lines under high pressure across state lines, and the transit of such gas after it had passed from such main pipe lines into tributary service mains. The court held the former to be interstate commerce and the

latter to be intrastate commerce and drew an analogy between taxing of the through pipe lines and the famous "breaking of bulk" cases in interstate commerce law. It was suggested in these pages that such a doctrine might some day be extended to the problem of testing the interstate commerce limitations on the transmission of electricity. Apparently, the Federal district court at Idaho has followed, to some extent at least, this reasoning as to interstate transmission.

The Idaho case involved an Idaho statute placing a tax upon all electrical energy "produced" within the state. The tax was resisted by a company engaged in the generation, transmission, delivery, and sale of electric power in Idaho, Utah, and Wyoming, on the ground that the production of electricity, being an instantaneous impulse flashed from the generator to the ultimate destination of the consumer in another state, could not be taxed by a state without the imposition of a burden upon interstate commerce. The court sustained the statute and distinguished between generation and transmission. The court pointed out that the tax was not measured by the amount of energy transmitted nor by the amount sold or used, but solely by the production. The opinion held that the tax was nothing more than a tax upon production of a commodity at its source, a part of which is thereafter transmitted in interstate commerce—how soon after apparently makes little difference, even as in this case where the delivery follows production instantaneously. *Utah Power & Light Co. v. Pfost et al.*

Wisconsin Taxes Motor Vehicle Hauling Companies

A NUMBER of states, in an effort to tax automotive hauling vehicles on a mileage basis for the purpose of maintaining the highway system, have encountered considerable difficulty because of numerous evasions and subterfuges which are possible under a number of state statutes. Wisconsin has a taxation statute for such vehicles which seems to be about as air-tight as it is possible to attain. The Wisconsin statute makes no distinction between common carriers and private carriers. It flatly requires the owners and operators of every truck exceeding in weight (including licensed carrying capacity) three tons to register as motor vehicle hauling companies.

There are, of course, a number of statutory exemptions: (1) vehicles weighing under the three tons; (2) vehicles owned and operated by the state or by municipalities; (3) vehicles used exclusively in the transportation of agricultural products; (4) vehicles operated exclusively within municipal boundaries; and (5) vehicles used by passenger bus companies. But the Wisconsin commission is determined that these statutory exemptions shall not constitute a loophole for any truck operator to escape through when he ought to be paying taxes. To this end, the commission has handed down a general order requiring the owners and operators of all motor vehicles weighing over the statutory limit to make returns to the commission and apply for operating permits. If an operator feels that he is exempted under the law, he must claim this exemption in making his return, otherwise he is taxed. Presumably, the commission coöperating with the motor vehicle license bureau of the state can easily check up on all carriers who attempt to evade the new tax law. *Re Motor Vehicle Hauling Companies. MVH–1.*

The Creation of a Separate Operating Gas Subsidiary Is Approved in New York

THE proposal of the New York State Natural Gas Corporation to transfer certain gas distributing properties to a local subsidiary in western New York has finally been approved by the commission of that state after a previous order of some months ago denying the application. The parent company indicated that it desired to engage in a larger enterprise in another part of the state of a nature foreign to the corporate character of the local property involved, making it in the interest of the public that it disassociate itself from such local operations and turn it over to a local subsidiary.

An unusual arrangement by which the gas properties serving the two neighboring territories are to be served by two distinct corporations under the common control of the New York State Natural Gas Corporation, having common officers and to some extent a common source of supply, was approved by the New York commission as being in public interest where it appeared desirable and necessary to continue to serve one area a straight natural gas supply at one rate and to serve the other area a mixed supply at a different rate, rather than to serve a uniform supply at uniform rates to both areas. Evidence also indicated that the expense of maintaining separate companies would be very slight. *Re New York Natural Gas Co. Case No. 7044.*

Other Important Rulings

IN view of the fact that § 553, General Code of Ohio, gives to all witnesses testifying in regulatory proceedings before the public utilities commission of the state full and complete immunity from all prosecution that might result on account of any "transaction, matter, or thing" concerning which they may have testified, the Ohio Supreme Court has held that a witness in a motor transportation case before the public utilities commission may not refuse to answer questions on grounds of constitutional privilege against self-incrimination, and a sentence for contempt of court against such a recalcitrant witness by a lower Ohio court was accordingly upheld. *Mouser v. Public Utilities Commission* (*Ohio Sup. Ct.*)

The New Mexico Supreme Court, in remanding to the corporation commission of that state a cause in which the latter had previously refused to approve of a revised time schedule of a motor carrier, pointed out that while statutory jurisdiction of the court and commission as to rates applied to all common carriers, the jurisdiction to regulate service applied only to railroad companies. *Re Wallace Transfer Co., Inc.* (*N. M. Sup. Ct.*)

When the Illinois commission some months ago denied a petition of a railroad company to discontinue an alleged unprofitable agency station, its only finding appeared to be that "the convenience and necessity of the public require the maintenance of petitioner's station at Green river as an agency station." Upon appeal the supreme court held that there was a mandatory duty upon the commission in such proceedings to make and enter findings of fact concerning the subject matter which might enable an appellate court to review intelligently the decisions of the commission. Its finding as to public convenience and necessity was held to be simply a conclusion drawn from the evidence. *Chicago, Rock Island & Pacific Railway Co. v. Illinois Commerce Commission* (*Ill. Sup. Ct.*)

In the absence of any evidence indicating that the commissioner of motor

vehicles abused his discretion in refusing to permit any more than one bus line to operate between London and Manchester, both points in the state of Kentucky, the court of appeals of that state affirmed the dismissal of an appeal from the commissioner's action by a protesting competitive carrier. *Black Bus Line v. Henry et al.* (*Ky. Ct. of App.*)

An order of the Washington Department of Public Works approving of the operations of a new ferry line between Ballard and Port Ludlow over the Puget Sound has been sustained by the supreme court of Washington, notwithstanding the existence of a ferry service between Edmonds and Port Ludlow. The court held that because a large and extensive territory is being served by a single ferry, such ferry does not thereby necessarily have a monopoly to the right to render service to the whole territory surrounding the body of water traversed. *State ex rel. Puget Sound Navigation Co. et al. v. Department of Public Works et al.* (*Wash. Sup. Ct.*)

The United States District Court in Ohio has sustained the right of a telephone company to have restrained the publication of competitive directories by independent publishers, where the latter obtain their data from the telephone company's own directories. It appeared that certain individuals in the vicinity of Cincinnati had published books purported to be telephone directories for the purpose of obtaining profits resulting from the inclusion of incidental advertising matter. There was evidence that the private publishers had copied their numbers from the telephone company's own directory, including even mistakes. While the court intimated that such a publication might be restrained as a violation of the telephone company's copyright privileges, it granted a restraining order on the ground that the duplication of erroneous numbers impaired the service of the telephone company by causing unnecessary confusion and the resulting expense of extra operators and equipment to handle such confusion. *Cincinnati & Suburban Bell Telephone Co. v. Brown et al.* (*U. S. Dist. Ct.*)

Ordinarily, the merger of corporate interests between competitive carriers has the effect of reducing competition. An unusual situation recently arose in New Hampshire, however, in view of the fact that a subsidiary bus company sought and obtained authority to compete with its own parent, the Boston & Maine Transportation Company. The bus company was petitioning for authority to operate between Manchester and Nashua, because of the recent abandonment of a street railway company formerly operating between these points. A restriction against the carriage of through passengers had been imposed upon the defunct street railway company for the protection of the Boston & Maine rail service. The bus petition requested that these restrictions be removed and it was so ordered by the majority of the commission, although Chairman Morse, in a dissenting opinion, took the position that the parent ought to be protected from competition by its own child in view of the public interest in the maintenance of rail service and notwithstanding the apparent willingness of the parent to submit to such competition. *Re Boston & Maine Transportation Co.* (*N. H.*) *J–281, Order No. 2361.*

An electrical utility which also renders steam-heating service may not discriminate in the matter of furnishing the latter service in favor of customers of its electrical service. Such was the holding of the Missouri commission in rejecting a proposed schedule purporting to cover rates, rules, and regulations for steam-heating service in down-town St. Louis by the Union Electric Light & Power Company of that city. The proposed schedule contained an objectionable provision which would have made it possible for the company to refuse steam-heating service to any but